gaining cooperatives. Sunshine and Chipola, in addition to bargaining for their members, have arrangements with processors for packaging their milk and operate distribution routes in the area.

Dairy Farmers Mutual and Northeast have attempted to maintain a degree of market stability after the State's minimum price regulations were discontinued in the Northeast and Central Florida areas in June 1965. They negotiated contracts with handlers using a $6.02 Class I price and a $5.45 price for Class I sales to military installations as a basis for such negotiations. In addition, they engaged a certified public accountant to audit the handlers' records. However, not all milk received by handlers operating in those areas is covered by such negotiations.

About 15 percent of the dairy farmers supplying handlers in the Northeast and Central areas are not members of a cooperative. No apparent uniform method is followed by these handlers in arriving at the prices they pay their dairy farmers. In those instances in which a handler may purport to pay his dairy farmers on a utilization basis, the handler establishes what the utilization scheme shall be, but the dairy farmers have no way of verifying the utilizations on which they are paid. The relative advantage that apparently accrues to handlers obtaining these supplies from unaffiliated dairy farmers tends to depreciate the bargaining position of cooperatives in negotiating with their buying handlers.

The Sunshine plant in Tallahassee and its facilities are leased from a handler, Foremost Dairies. The cooperative owns the routes operating from the plant. All fluid milk products distributed on these routes bear the Foremost label. The contract establishing this arrangement expires October 31, 1966. There appears to be considerable doubt as to whether the contract will be renewed.

If the Sunshine-Foremost contract is not renegotiated in its present form, it is contemplated that Sunshine on behalf of its 31 members will make considerable changes in its marketing arrangements. Sunshine spokesmen, for example, are uncertain whether the cooperative will continue its present route operations, which would entail obtaining a new plant; or whether it will dispose of its routes and operate as a bargaining cooperative, possibly joining with an established bargaining cooperative. A spokesman for Foremost also indicated doubt about the renewing of this handler's contract with Sunshine. If it is not renewed, Foremost will likely close its plant in Tallahassee and utilize its Jacksonville plant for any distribution it will have in the Tallahassee area.

Producer-members of Chipola deliver milk to a plant in Marianna, which is owned and operated by Sealtest Foods Division, National Dairy Products Corp. Sealtest processes and packages this milk for the cooperative, which the cooperative distributes on its routes in the Tallahassee area.

This arrangement, apparently, has not worked too satisfactorily for Chipola's 15 members. In 1961, the last year before this arrangement became effective, Chipola's producers received $5.70 for milk of 3.5 percent butterfat. In 1962, the price dropped to $4.80 and since 1962, it has stabilized at about $4.60. At the time of the hearing, Chipola's 15 producer-members were negotiating with Northeast to become members of that association and to deliver their milk to Jacksonville. If this occurs, Sealtest plans to close the Marianna plant and service its Tallahassee area sales from its Jacksonville plant. It was not indicated what Chipola would do with their routes.

The present arrangements between the various cooperatives and handlers expire during 1966. Sunshine's contract expires October 31 and Northeast's, August 31. Mutual's contract with its handlers, which is on an annual basis, will expire before December 1966. There is no assurance new contracts can be negotiated or, if they are, that they will be as favorable to producers as the present contracts.

The proponent cooperatives contend that only a device such as a Federal milk marketing order can prevent further deterioration in their bargaining position and insure orderly marketing and stability in the sales area served by them and their buying handlers.

The stated Class I prices in the proposed marketing area do not accurately reflect the prices paid by handlers for their actual Class I dispositions. This is because there are significant variations in what is considered Class I by different handlers. Historically in this area, producers have been paid prices substantially lower than the stated Class I prices for milk disposed of by handlers to military installations. There have also been other Class I categories, such as sales to schools, for which producers received less than the stated Class I price. To what extent such Class I categories are now used by handlers in computing their payments to producers is not known.

The utilizations on which a substantial number of producers in the market are paid are not audited or otherwise verified. In view of the uncertainty of their position with their buying handlers, there is apprehension among producers. They lack assurance that the contracts which their various cooperatives have with handlers will be renewed or on what basis they may be renewed.

Since the "Polar Ice Cream Case" (the 1964 U.S. Supreme Court decision denying the State the authority to discriminate in the allocation of out-of-State milk received at a Florida plant), there has been increasing fear among producers that their milk may be down-allocated or replaced by their buying handlers with the surplus milk that may become available on an opportunity basis from time to time. The surplus supplies from nearby locations in Georgia and Alabama are continuously a threat in this regard. Although both these States fix minimum prices that handlers must pay producers according to the utilization of their milk, such prices do not apply to out-of-State sales. This provides an incentive for Georgia and Alabama handlers to dispose of unneeded supplies at any price above that which they would realize in disposing of such supplies for manufacturing purposes. The disposition of such milk in the proposed marketing area for Class I, even for short periods, has a deteriorating effect on the bargaining position of producers regularly supplying the market. The uncertainty among producers, caused by the threat of their losing their market to such surplus supplies, tends to create instability in the market and to discourage rather than encourage the maintenance of an adequate supply of pure and wholesome milk for the market.

Approximately 10 percent of the Class I sales in the proposed marketing area is to military installations. Contracts for supplying such installations are awarded on a bid basis for varying periods, usually about 6 months. These contracts most frequently are obtained by handlers in the market who would be regulated by the proposed order. It is not uncommon, however, for the successful bidders on these contracts to be handlers at some distance from the marketing area, usually in adjoining States. Moreover, it has been possible at times for local handlers to obtain such contracts on the basis of their being able to obtain supplies from outside sources for limited periods of time. This tends to result in the down-allocation or replacement of the milk of the handlers' regular producers. Even if a handler heavily involved in supplying military installations utilizes no outside supplies to fill his military contracts, his failure to obtain contract renewals may cause a sharp decline in the return he will be able to make to his producers.

Under the proposed order, and in all existing Federal milk orders, the pricing of milk sold to military installations is the same as the Class I price to all other outlets. The advent of a marketwide pool order would remove the continuous uncertainty concerning their market of producers supplying handlers who make a substantial portion of their Class I sales to military installations.

The problems of unstable marketing encountered by producers in the proposed marketing area are not uncommon in fluid milk markets where there is no overall program for effectively regulating producer milk supplies. Production of high quality milk in Florida requires a substantial investment. The present unstable marketing conditions could discourage continuation of the necessary production resources and thereby seriously threaten the maintenance of an adequate supply of milk for the market. A Federal order establishing class prices at reasonable levels with a marketwide pool for distribution of returns to producers will provide the needed market stability.

There is now a lack of detailed market information relative to procurement of milk and disposition of milk throughout the marketing area. Such information is essential to the effectuation of orderly marketing. The institution of Federal milk order regulation will provide the

basis for complete information on receipts and utilization of milk.

A marketing agreement and order for the Upper Florida marketing area as herein proposed would contribute substantially to the improvement of many of the conditions complained of by producers and would tend to effectuate the declared policy of the Act. A classified pricing plan based on the audited utilization of handlers would provide a uniform system of minimum prices to handlers for milk purchased from producers and a fair division among all producers of the proceeds from the sale of their milk. The procedures required by the Agricultural Marketing Agreement Act would afford all interested parties the opportunity to take part in determining through public hearing what assistance the marketing system requires in order to insure an orderly market.

3(a) *Scope of regulation.* It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the order. This is accomplished by providing specified definitions to describe the area involved, and to describe the category of persons, plants and milk products to which the applicable provisions of the order relate.

Marketing area. The Upper Florida marketing area should include all the territory within the 40 contiguous Florida counties of Alachua, Baker, Bay, Bradford, Brevard, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Orange, Osceola, Putnam, St. Johns, Seminole, Sumter, Suwanee, Taylor, Union, Volusia, Wakulla, and Washington.

Because a significant portion of the sales of fluid milk by handlers who would be regulated is in relatively rural communities and because of the substantial population immediately surrounding the various cities, it is important that the marketing area be defined on a county boundary basis rather than on the basis of city boundaries.

The 1960 census population of the area proposed to be regulated was 1,737,000. The population of Jacksonville, Orlando, and Tallahassee, the largest cities in the proposed area, was then 213,000, 88,000, and 48,000, respectively. Other principal cities and their 1960 populations include Daytona Beach (37,000), Panama City (33,000), Gainesville (30,000), Sanford (19,000), Winter Park (17,000), St. Augustine (15,000), Ocala (14,000), Deland (11,000), Lake City (10,000), and Marianna (7,000).

Duval County, in which Jacksonville is located, contains the greatest concentration of population in the 40-county area. Its 455,000 inhabitants represent more than 25 percent of the area's population. The four counties (Duval, Orange, Volusia, and Brevard) in the proposed marketing area, whose 1960 populations were greater than 100,000, contain 956,000 or 55 percent of the 1,737,000 people in the marketing area. Most counties in the area, however, are predominantly rural. Of the 40 counties in the proposed marketing area, 25 have less than 20,000 inhabitants.

The 41-county marketing area considered at the hearing was proposed by the Southland Corp., a handler with wide distribution throughout the marketing area. No counties other than the 41 were proposed by others. Foremost Dairies proposed a 40-county marketing area. Sunshine State Dairymen's Cooperative (Sunshine) and Chipola Dairy Cooperative (Chipola), which represent producers supplying handlers in the Tallahassee area, proposed a marketing area of 39 counties. Northeast Milk Producers Association (Northeast) and Dairy Farmers Mutual (Mutual) proposed a 25-county marketing area. These 25 counties are substantially those which had in the past been designated as the Northeast Florida and Central Florida marketing areas by the Florida Milk Commission.

Except for Indian River County, there was active support for and no opposition to the inclusion of the proposed counties in the marketing area. No testimony was presented to support the inclusion of Indian River County in the marketing area. Instead, it was indicated that this county should more appropriately be included in the Southeastern Florida marketing area and that a hearing for accomplishing this purpose had been requested.

More than 40 handlers (including producer-distributors) have route distribution in the proposed marketing area. The total route distribution by these handlers is about 40 million pounds of milk monthly.

The principal source of supply of handlers who would be regulated by the proposed order is from producer-members of the four cooperatives proposing an order for the area, Northeast, Mutual, Sunshine, and Chipola. These cooperatives represent and market the milk of about 70 percent of the approximately 215 producers on the market. Independent Dairy Farmers' Association (IDFA), the principal cooperative in the Southeastern Florida and Tampa Bay order markets, represents an additional 10 percent of the producers supplying handlers in the proposed area.

Besides the approximately 215 producers supplying handlers in the proposed area, an additional 25 farms are operated by handlers whose principal source of supply is the production of their own farms. These handlers account for about 20 percent of the total Class I distribution in the proposed marketing area. The three largest operations in this group, all in the Jacksonville vicinity, distribute about 6 million pounds of milk monthly. Most of the other 22 such handlers maintain relatively small operations for processing and distributing the production from their own farms. The handlers with own-farm production who qualify as producer-handlers would be exempt from the pooling and payment provisions of the order.

Distribution throughout the area is predominantly from the plants of a relatively small group of handlers in or near the larger cities in the marketing area. Of the 17 plants in the market whose principal source of supply is from producers (other than own-herd production) 7 are in Jacksonville, 5 in the Orlando area, 4 in the Tallahassee area and 1 in the vicinity of Gainesville. Five handlers who operate eight of these plants account for well over half of the Class I sales in the proposed marketing area. Also, one or more of them has distribution in each of the counties in the proposed marketing area.

A number of the major handlers operate more than one plant from which milk is distributed in the marketing area. From the Borden Company plants in Orlando and Tallahassee, fluid milk products are distributed in at least 28 counties in the proposed marketing area. In addition, milk is distributed in other counties in the marketing area from the Borden's Tampa Bay order pool plant. The total distribution from the Southland Corp.'s Jacksonville plant is within a 23-county area that encompasses the Jacksonville and Tallahassee vicinities. Some fluid milk products distributed on routes from its Jacksonville plant emanate from Southland's Winter Haven plant, a Tampa Bay pool plant. The fluid milk products transferred to the Jacksonville plant and the route distribution from Winter Haven within the proposed marketing area, in the Orlando vicinity and in counties adjacent to the Tampa Bay marketing area, are about 30 percent of the Class I utilization at that plant. Sealtest Foods operates plants in Jacksonville and in Marianna (which is in the Tallahassee vicinity). The total Class I distribution from these plants is made within the proposed marketing area. Sealtest's Tampa Bay pool plant also has some distribution in the proposed marketing area. Foremost Dairies, which operates a plant in Jacksonville, owns the plant in Tallahassee that is now leased and operated by Sunshine. Also, the Foremost Tampa Bay order plant has some distribution in the proposed marketing area.

It is not uncommon for handlers operating two or more plants in relatively close proximity to package different sizes and categories of fluid milk products in each plant. In such instances, packaged fluid milk products are moved regularly between the handler's plants in the same or adjacent marketing areas. Establishing an order to include the 40-county marketing area will facilitate such movement of both packaged and bulk fluid milk products between plants within the proposed marketing area and with plants in the adjacent Tampa Bay area.

The route distribution of handlers who would be regulated and of producer-handlers in the market is confined almost entirely to the 40-county area. These handlers are, by a wide margin, the principal distributors in all sections of the proposed marketing area. Route distribution by other handlers (principally Tampa Bay order distributors) in the 40-county area is not a significant

portion of the total distribution in the area.

In the northwestern portion of the marketing area, two handlers whose plants are outside the marketing area (in Pensacola, Fla. and Mobile, Ala.) have some distribution in the proposed marketing area, in Bay County. The Class I disposition by these handlers in the marketing area is apparently insufficient to qualify their plants as pool plants. The Pensacola handler's Class I sales in the county are primarily to stores and restaurants. The Mobile handler is currently supplying two military installations in Bay County. Both handlers, if their Class I distribution in the marketing area continues to be below the minimum required for pooling, would be treated as partially regulated distributing plants under the order. Neither handler took any position at the hearing concerning the inclusion of Bay County in the marketing area. Their sales in the county, however, are a relatively small proportion of the total distribution therein. The major portion of distribution in Bay County is by handlers who would otherwise be fully regulated by the proposed order.

In view of the operations of the handlers who would be regulated by the proposed order, it would be inappropriate to provide a marketing area for the proposed order that excluded a segment of the proposed marketing area. As indicated above, the plant operations of the principal handlers in the marketing area are in or near Jacksonville, Orlando, and Tallahassee. There is extensive competition throughout the marketing area between fluid milk products from Jacksonville plants with those emanating from Tallahassee and Orlando area plants. The closing of two Tallahassee area plants is currently under consideration. If these plants are closed, the distribution that is now made from them would be made from Jacksonville plants. The possibility of the closing of the Tallahassee area plants has caused producers in that area to consider affiliation with the producer association in the Jacksonville area and shipping to Jacksonville plants. Improved technology and transportation facilities will tend to accelerate such concentration of processing and packaging facilities at centrally located plants and distribution over a wider area from such plants. The 40-county marketing area herein proposed appropriately gives consideration to this.

All producer milk received at regulated plants must be made subject to classified pricing under the order regardless of whether it is disposed of within or outside the marketing area. Otherwise, the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in-area" sales were subject to classification, pricing and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value he chose to his outside sales. He thereby could reduce the average cost of all his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. Unless all milk of such a handler were fully regulated under the order, he in effect would not be subject to effective price regulation. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of his milk at any price he chooses, it would be impossible to enforce uniform prices to all fully regulated handlers or a uniform basis of payment to the producers who supply the market.

It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition. Further, the level of class price should be identical on Class I sales inside and outside the marketing area.

The essentials of the classified pricing plan for the Upper Florida order, and generally applicable to all Federal orders issued by the Secretary, are to establish one level of price to be paid by handlers for milk which is sold as milk or specified milk products for fluid consumption and other prices for the necessary surplus of the market which is disposed of in lower-valued fluid products and in manufactured products.

It is necessary that the class prices effective under the Upper Florida order be established at levels which will bring forth a sufficient supply to meet the demands of milk for the particular marketing area but not necessarily to fulfill the requirements of outside markets. Nevertheless, handlers who are regulated by virtue of their sales in the marketing area may have varying proportions of their sales outside the regulated area. This is a situation normally unavoidable even in the establishment of a new marketing area. Sales areas of regulated and unregulated handlers may overlap, and it would be rarely possible, if at all, to find a line of demarcation around an entire marketing area such that no overlapping occurs. Other considerations in establishment of a marketing area may also preclude inclusion of all sales areas of fully regulated handlers.

The problem of establishing a price to supply adequately the marketing area is thus affected by the activity of handlers in selling milk outside the regulated area and in procuring milk for such sales. There is no basis in this price determination for discrimination between milk sold inside and outside the marketing area. The milk sold outside by a regulated plant is processed in the same plant and is produced under similar conditions as milk sold in the marketing area. Thus, the milk moving through the regulated handler's plant, whether it is sold inside or outside the marketing area, is part of the same supply and demand situation upon which proper price level determination must be made.

If the price to farmers were higher for milk sold inside than for milk sold outside the marketing area, returns for disposition in the area would be bearing the greater burden of providing the incentive for milk production for both. To the extent such discrimination in pricing at the procurement level is reflected in higher prices to consumers inside than outside the marketing area consumers in the marketing area will be subsidizing consumers outside the marketing area.

Further, it is not intended that Federal regulation be susceptible of manipulation to permit the use of adjacent outside markets as a dumping ground for milk in excess of a market's needs. The fixing of a lower price for milk sold in other markets could have a depressing effect on the price paid farmers by unregulated distributors in such markets. Such action would tend to lower blended returns to dairy farmers supplying the unregulated handlers.

Limited quantities (as provided) of Class I milk may be sold within the regulated marketing area from plants not under any Federal order. There is, of course, no way to treat such unregulated milk uniformly with regulated milk other than to regulate it fully. Nevertheless, it has been concluded that the application of "partial" regulation to plants having less association than required for market pooling would not jeopardize marketing conditions within the regulated marketing area.[1]

The operator of the partially regulated plant is afforded the options of: (1) Paying an amount equal to the difference between the Class I price and the uniform price with respect to all Class I sales made in the marketing area; (2) purchasing at the Class I price under any Federal order sufficient Class I milk to cover his limited disposition within the marketing area; or (3) paying his dairy farmers an amount not less than the value of all their milk computed on the basis of the classification and pricing provisions of the order (the latter representing an amount equal to the order obligation for milk which is imposed on fully regulated handlers).

While all fluid milk sales of the partially regulated plant are not necessarily priced on the same basis as fully regulated milk, the provisions described are, however, adequate under most circumstances to prevent sales of milk not fully regulated (pooled) from adversely affecting operation of the order and the fully regulated milk.

In the course of the operation of an order, the question may arise as to whether piers, docks, wharves, and any territory within the boundaries of the designated marketing area which is occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other establishments shall be considered as within the marketing area. A proposal was made to include in the order sales by a handler in any such territory or to any such agency. These facilities constitute regular outlets for milk by handlers to be regulated and no evidence was presented at the hearing

[1] Official notice is taken of the decisions of the Assistant Secretary issued June 19, 1964 (29 F.R. 9002), supporting amendments to various orders, including the nearby Southeastern Florida order.

which would justify their exemption. So that there will be no doubt as to the meaning or the intent of the application of the marketing area definition in the proposed order, it should be indicated that the designated counties in the recommended Upper Florida marketing area shall include all piers, docks, and wharves connected therewith and any territory wholly or partly within the area which is occupied by the government (municipal, State, or Federal) reservations, installations, institutions or other establishments.

Definition of plants. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants substantially engaged in serving the fluid needs of the order market and those plants which do not serve the market in a way, or to a degree, that warrants their sharing (by being included in the market pool) in the market average utilization of Class I milk. Such distinction is necessary; otherwise, the proceeds of the higher Class I price would be dissipated by including in the market pool additional quantities of milk which were acquired by handlers primarily for manufacturing purposes. Such dissipated proceeds could accrue to the benefit of producers supplying milk to handlers who do not regularly or dependably furnish the fluid milk needs of consumers in the marketing area. Unless adequate standards of marketing performance are provided to determine which milk and plants will participate fully in the market pool funds, the uniform price of the market could be depressed to the point that it would not serve its function of attracting an adequate supply of milk for the fluid needs of the market without a Class I price higher than otherwise would be necessary.

Since Class I price increases are generally passed on to the public, such price increases necessitated solely because of inadequate performance standards for regulation would be contrary to the public interest. Therefore, in order to share in market pool funds, it is essential that plant operators perform marketing functions (i.e., deliver milk to market in specified amounts or proportions) which contribute to providing adequate and dependable market supplies. The marketing performance standards are essential provisions of a milk order if it is to attain the statutory purpose of assuring adequate supplies of milk in the most economical manner and in a way that best serves the public interest. The marketing performance standards also minimize the effects of regulation on handlers who have only a minor proportion of their distribution in the regulated market. They do this by exempting such handlers from full regulation.

Any plant, wherever located, may become a pool plant if it meets the marketing performance standards for regulation which at any time are equal for all plants performing the same function. The performance standards for regulation of a plant are an essential means of assuring the regulated market of adequate and dependable supplies of milk. It should be emphasized that these performance standards do not impede the shipment of milk to regulated markets. Quite the contrary. Because they require milk to be shipped to the market in order to share in the market pool funds, they encourage milk shipments for Class I use which otherwise might not be made. This incentive is achieved by preventing plants which do not ship milk in accordance with the prescribed standards from sharing in the pool fund. The performance standards are thus the opposite of a barrier to the shipment of milk to the market.

Because of the difference in marketing practices and functions between distributing plants and supply plants, separate performance standards have been provided for them. A "distributing plant" would be defined as a plant approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month in the marketing area on routes.

In order to qualify as a pool plant, a distributing plant should be required to dispose of on routes in the marketing area not less than 10 percent of its total receipts of Grade A fluid milk products.

It is contemplated that only plants primarily engaged in route distribution of fluid milk products should be qualified as pool plants under this definition. To preserve this distinction, a further condition should be placed on distributing plants. This is that a plant's total route distribution of Class I milk during the month, both inside and outside the marketing area, must be at least 50 percent of its receipts of Grade A fluid milk products. Any plant which does not qualify on this basis should be deemed to be primarily a supply plant and its pool status judged by the standards applied to such plants.

A plant from which milk for Class I uses is distributed regularly in the marketing area under normal circumstances may be expected to dispose of its milk in such a way as to exceed by a reasonable margin the minimum performance standards necessary to qualify as a pool plant. There may be from time to time plants supplying milk to the marketing area which would not qualify for pool status. Such plants should be required to file reports, make available their records for audit by the market administrator and be subject to payment alternatives hereinafter discussed if they are not fully subject to regulation under another order.

"Supply plant" is the other plant category for which standards for pooling must be provided. A supply plant would be defined to mean a plant from which a fluid milk product acceptable to a duly constituted health authority is shipped during the month to a pool plant.

To qualify for pool plant status, a supply plant should ship to distributing plants which are pool plants at least 50 percent of its receipts of milk from dairy farmers in any month in the form of fluid milk products. A plant thus shipping the major portion of its receipts from dairy farmers to regulated distributing plants is making a substantial contribution toward providing an adequate supply for the market and hence may reasonably be considered as an integral part of the fluid milk supply for the market. A supply plant from which a proportionately lesser quantity of milk is disposed of in this manner should not, under present conditions, be considered as contributing sufficiently to the market supply to share in the pool funds.

At the present time, there are no supply plants regularly serving the Upper Florida market, and it is not likely that there will be in the foreseeable future. However, provision should be made so that it will be possible for a supply plant to participate in the pool should there be a regular and continuing need for supply plant milk in the future.

Some milk may be distributed in the marketing area from plants which are fully subject to the classification and pricing provisions of other Federal milk orders. It is not necessary to extend full regulation under an order to such plants which dispose of a major portion of their receipts in another regulated market. To do so would subject such plants to duplicate regulation. However, in order that the market administrator may be fully apprised of the continuing status of such a plant, the operator thereof should, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

A definition of "nonpool plant" is provided to facilitate formulation of the various order provisions as they apply to such a plant. A nonpool plant would mean a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing, processing, or bottling plant. Specific categories of nonpool plants would be defined as follows:

(1) "Other order plant" is a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant under this order and a greater volume of fluid milk products is disposed of from such plant in this marketing area on routes and to pool distributing plants than to plants under the other order or in the marketing area of such other order;

(2) "Producer-handler plant" is a plant operated by a producer-handler as defined in any order (including this order) issued pursuant to the Act;

(3) "Exempt distributing plant" is a distributing plant operated by a governmental agency;

(4) "Partially regulated distributing plant" is a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant or an exempt distributing plant; and

(5) "Unregulated supply plant" is a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

A spokesman for the University of Florida (which maintains a dairy herd and a processing plant in Gainesville) requested that its dairy plant operation be exempt from the provisions of the Upper Florida order. This plant receives practically all of its milk from the 160 dairy cows maintained on the University's farms. The one load of supplemental milk purchased in 1965 by the University, at the beginning of the school year, was from a Tampa handler.

The milk production and processing carried on at Gainesville are maintained in connection with the research and educational functions of the University of Florida. They are used and deemed necessary in connection with the various courses given and research done under the auspices of the Dairy Science Department of the University. The plant facilities are used for laboratory instruction and research. Each animal in the herd is generally being used in at least two experiments.

Milk that is not needed for the various research projects is disposed of in fluid form through 15 campus cafeterias or manufactured into ice cream, cottage cheese, or other dairy products. In those periods when students are on vacation, the unneeded production is sold to Sunland Training Center, another State institution in Gainesville, or condensed for later use in the manufacture of ice cream.

Several other State educational institutions and mental and penal establishments within the proposed marketing area also maintain herds and bottling facilities to furnish milk to their residents. Detailed information on receipts and sales of milk at these institutions was not presented on the record. However, it is not the practice of these institutions to sell milk in commercial channels in competition with proprietary handlers and producers.

It is not likely that the University of Florida plant (or plants of governmental agencies similarly situated) will have production from its farm in excess of its usual requirements. Such excess production if it should develop could not be depended upon by handlers in the Upper Florida market as a regular or a supplemental supply during periods when the market may be short of milk. It would clearly be surplus milk incidental to the operation of the University's milk plant. Accordingly, the order should provide that milk received at pool plants from such incidental operations be allocated first to Class III. Any such milk allocated to Class I at a pool plant would be subject to a compensatory payment at the difference between the Class I and Class III prices.

The University of Florida's milk plant (and similar institutions) may at times be required to purchase supplemental supplies from handlers who would be regulated by the proposed order. It may reasonably be expected that purchases in the form of fluid milk products would be needed and used for Class I purposes. The order should provide, therefore, that fluid milk products transferred or diverted from pool plants to exempt distributing plants be classified as Class I.

To qualify for pooling under the proposed order, milk must be received at a pool plant or diverted under specified conditions from a pool plant to a nonpool plant. Because an exempt distributing plant would be a nonpool plant, milk received at such plant from sources other than regulated plants and producers under the Upper Florida order would not be subject to the provisions of the order. Therefore, milk from producers' farms received at an exempt distributing plant could qualify as producer milk under the order only on the basis of its having been diverted from a pool plant. Otherwise, such milk would lose its producer milk status and would not be pooled or priced under the Upper Florida order.

Handler. The primary impact of regulation under an order is on handlers. A handler definition is necessary to identify those individuals from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the definition includes (a) persons operating pool plants; (b) a person operating a partially regulated distributing plant; (c) a cooperative association with respect to producer milk diverted from a pool plant to a nonpool plant for its account; (d) a cooperative association with respect to its members' milk delivered in a tank truck under its control from the farm to a pool plant; (e) a person in his capacity as the operator of an other order plant; and (f) a producer-handler.

Designating as handlers the operators of the various types of plants that may be associated with the market is necessary so that the market administrator may require of them the reports to determine the regulatory status of the plants and the extent of the operators' obligations, if any, to the producer-settlement fund.

The principal cooperatives in the market assume the responsibility of balancing supplies among various handlers. Milk not needed for fluid uses generally can be most economically handled by diversion directly to manufacturing plants. To facilitate such handling, a cooperative is accorded handler status for milk which it causes to be diverted to nonpool plants for its account.

Requiring a cooperative to be a handler for milk delivered from the farm to a pool plant in a tank truck owned and operated by or under contract to the cooperative will afford a practicable basis of accounting for such milk. In addition, it will provide added flexibility to a cooperative's operations in allocating its members' milk among handlers.

Once milk from a producer has been commingled with milk of other producers in a tank truck, there is no further opportunity to measure, sample or reject the milk of any individual producer whose milk is included in the load. A similar situation prevails when the milk of an individual producer is delivered in a tank truck to two or more plants. The operator of a pool plant to which bulk tank milk is delivered has an opportunity to determine only the weight and butterfat test of the total load.

If a tank truck picking up milk at the farm is operated under the supervision of a cooperative association, it is the association that determines the weight and butterfat content of each producer's milk. Handlers have no control and generally take no part in determining the weights and butterfat tests of milk at the farm. In some instances, handlers may not even know from which farms their milk is shipped.

The milk delivered by the cooperative as a bulk tank handler would be considered as a receipt of producer milk by the operator of the pool plant at which it was physically received. The pool plant operator's obligation for such milk to the producer-settlement fund, to the administration fund and to the cooperative would be the same as for producer milk received directly from the farm of an individual producer.

In some instances, as discussed elsewhere in this decision, differences between the quantities of producer milk determined at the farm and ascertained as physically received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative at the location of the pool plant. For such differences, the cooperative (instead of the pool plant operator) would be required to settle with the producer-settlement and administration funds.

Producer-handler. Producer-handler should be defined as any person who:

(a) Operates a dairy farm and a distributing plant from which the Class I disposition (except that represented by nonfat solids used in the fortification of fluid milk products) is entirely from his own farm production;

(b) Receives no fluid milk products from sources other than his own farm production; and

(c) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all fluid milk products handled and the operation of the processing and packaging business are his personal enterprise and risk.

The order is not intended to establish minimum prices for producer-handlers, but they should be required to make reports to the market administrator. Such reports are necessary to determine whether the operator continues to meet the producer-handler definition.

The producer-handler definition herein provided, which is patterned after that proposed by producers, is essentially the same as the producer-handler definition in the Tampa Bay and Southeastern Florida orders. Proposals by handlers, however, would restrict producer-handler status to those who met the qualifications herein proposed and handled not more than 200,000 pounds of milk monthly. Handlers would also require that a producer-handler who failed to qualify as such in 1 month would lose his producer-handler status for the next 11 months. On the other hand, some pro-

ducer-handlers proposed broad exemptions which would allow them a preferred allocation for their own production and have other area producers supply their supplementary needs. A specific proposal of two handlers with own-farm production would permit a producer-handler to purchase up to 10 percent of his Class I sales from pool sources without losing producer-handler status.

The exemption from pricing and pooling of a producer-handler should be limited to bona fide producer-handlers. It is appropriate, therefore, to provide that to maintain producer-handler status, the maintenance, care and management of the dairy animals and other resources necessary to produce milk and the processing, packaging and distribution of milk shall be the personal enterprise and risk of the person involved. The term producer-handler is not intended to include any person who does not accept the responsibility and risk for the operation of the plant in which the milk of his own production is processed and bottled for sale.

Exemption from regulation as a producer-handler must be limited to those persons whose own farm production is the sole source of their Class I disposition (except nonfat solids used to fortify Class I products). To permit them to purchase fluid milk products from other sources without becoming fully regulated would give them an unwarranted competitive advantage over other handlers in the market. This is so because they would be able to retain the full value of their Class I sales for themselves without assuming the burden of their own surplus. However, as long as they produce their own Class I needs and the necessary reserves and handle their own excess production, producer-handlers will not have a significant advantage over regulated handlers under present marketing conditions.

Any milk which a regulated handler receives from a producer-handler would be other source milk and, therefore, would be allocated to the lowest use classification after the allocation of shrinkage on producer milk. This is appropriate since milk disposed of to another handler normally would be surplus to the operation of the producer-handler.

In proposing that a producer-handler who failed to qualify as such in 1 month would lose his producer-handler status for the next 11 months, handlers maintained that this would prevent him from exploiting the pool by becoming regulated when it was to his advantage, while retaining his exempt status at other times. Such a provision, however, could result in hardship in some instances. For example, an inadvertent failure to meet all requirements for producer-handler status in 1 month could cause a person to lose his designation as a producer-handler for an entire year. The regulatory effect of such action might too often tend to be disproportionate to the relative significance of the requirement that was not met. Since a producer-handler must rely on his own production, he must establish adequate production facilities to assure a sufficient milk supply for his operation. Because of this, it is unlikely that a producer-handler will shift back and forth between his exempt status and that of a regulated handler for the purpose of exploiting the pool.

It is expected that less than half of the 25 handlers in the market with own-farm production will qualify as producer-handlers under the order. At least three such handlers distribute more than 200,000 pounds of milk monthly. The combined operations of these three potential producer-handlers account for more than 10 percent of the total Class I sales in the proposed marketing area. Because their sales are such a relatively large proportion of the market total, handlers who would be regulated under the proposed order stressed the need to have such large operations regulated. Proponents, however, did not show that these producer-handlers have any cost advantage on Class I milk or are a disruptive factor in the market. Moreover, it was not established that exempting those handlers with own-farm production who qualify as producer-handlers, even the three largest, would affect adversely the competitive position of regulated handlers or producers. For the above stated reasons, the proposals to limit producer-handler status to operations of not more than 200,000 pounds of milk monthly and the proposal that would deny producer-handler status during the succeeding 11 months to a producer-handler who failed to qualify as such in 1 month are denied.

Route. The term "route" would mean a delivery (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor, or vending machine) of a fluid milk product classified as Class I.

Fluid milk products may be moved from a milk plant to a distribution facility such as a warehouse, loading station or storage plant. The distribution from such latter point would be considered route distribution from the milk plant. To do otherwise would be inappropriate because it would consider the disposition of fluid milk products to have been made at the temporary storage facility instead of at the location at which such products are received by retail and wholesale purchasers.

Producer. Producer should mean any person (except a producer-handler or a governmental agency in its capacity as the operator of an exempt distributing plant) who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted therefrom to a nonpool plant under certain conditions. The producer definition will provide the necessary distinction between the production of those farmers whose milk will be priced and pooled each month under the Upper Florida order and the receipts at handlers' plants from all other sources.

Fluid milk products. Fluid milk products should mean milk (including frozen and concentrated milk), flavored milk and skim milk. The definition should not, however, include sterilized products in hermetically sealed containers. The items designated as fluid milk products pursuant to this definition are those products which, when disposed of by handlers, are included as Class I milk.

Producer milk. Producer milk is intended to include all milk that is fully regulated by the order. Accordingly, it should be defined as all skim milk and butterfat contained in milk received at a pool plant directly from dairy farmers and milk diverted from a pool plant to a nonpool plant under certain conditions. As provided elsewhere in this decision, milk delivered by a cooperative as a bulk tank handler would be considered as a receipt of producer milk by the operator at the pool plant at which it was physically received.

Producer milk should not include any milk moved from a farm directly to an other order plant since such milk's eligibility to be included under a Federal order would be more appropriately determined at the other order plant where received. In fact, diversion to such plants if permitted could result in the pricing and pooling of the same milk under two orders.

When milk is not needed in the market for Class I purposes, the movement of such milk to a nonpool plant for manufacturing purposes should be facilitated. It is necessary, however, to provide limitations on the amount of milk which may be diverted so that only that milk which is genuinely associated with the market will be diverted and only at those times when it is not needed in the market for Class I purposes.

Producers associated with this market are not expected to produce large quantities of milk in excess of the market's fluid requirements. Diversion provisions are provided herein primarily to enable handlers and cooperative associations to divert producer milk on such occasions as weekends and holidays when the milk is not needed in the market for Class I purposes.

Diversion of producer milk by a cooperative to a nonpool plant should be limited to 25 percent of the milk physically received from its producer-members at pool plants during the month. Similarly, milk diverted by the operator of a pool plant for his account would be limited to 25 percent of the quantity of producer milk physically received at his plant during the month.

The proposed diversion provisions are appropriate under the conditions in the Upper Florida order market. There was no opposition to the diversion provisions, which were supported by both producers and handlers at the hearing.

Only that milk genuinely associated with the market should be eligible to be diverted to nonpool plants. Therefore, it is provided that at least 10 days' production of a producer must be received at a pool plant during the month to qualify any of his production in the same month for diversion within the limits described above. A producer shipping on an every-other-day basis would under this standard be required, in effect, to ship only five days. The requirement herein

adopted is sufficient to establish a producer's association with the fluid market and still permit the necessary flexibility in diverting milk not needed for fluid use.

Milk diverted to nonpool plants in excess of the limitations provided would not be considered producer milk. Hence, eligibility for pricing and pooling under the order would be forfeited on a quantity of milk equal to such excess. In such instances, the diverting handler would specify which milk is ineligible as producer milk. If the handler fails to make such designation, thereby making it infeasible for the market administrator to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler would be made ineligible as producer milk.

Producer milk that is diverted should be priced at the location of the plant to which diverted instead of at the location of the pool plant to which it is customarily delivered. To provide for pricing such milk at the latter location would be inappropriate. This is because it would result in producers in the market paying (through the pool) a transportation cost to the market on milk which is not moved to the market and on which an equivalent transportation charge is not incurred.

Other source milk. A definition of "other source milk" is necessary to facilitate the application of the order to the various categories of receipts at a regulated plant.

Other source milk should include all skim milk and butterfat contained in or represented by (a) fluid milk products and Class II products utilized by the handler in his operation (except producer milk, fluid milk products and Class II products from pool plants, and fluid milk products and Class II products in inventory at the beginning of the month), (b) all manufactured dairy products from any source (including those produced at the plant) which are reprocessed or converted into another product during the month, and (c) any disappearance of nonfluid milk products in a form in which they may be converted into Class I products and which are not otherwise accounted for under the order.

In order to verify the actual utilization of milk received from producers, it is necessary that the market administrator be in a position to reconcile all receipts of milk and dairy products with the disposition records of the plant. If such records cannot be reconciled, the handler must be held responsible for the shrinkage or the overrun which occurs as a result of the discrepancy between records of receipts and disposition. Otherwise, the handler with improper records would be in a position to gain an advantage over his competitors who properly account for all milk and dairy products received. It is equally necessary that the handler be required to account for all nonfluid dairy products in a form in which they can be converted into Class I products. Otherwise, a handler, by failing to keep records of the nonfat dry milk and similar products which can be reconstituted into skim milk or other fluid products would gain a competitive advantage over other handlers in the market.

(b) *Classification of milk.* Milk and milk products received by handlers should be classified on the basis of skim milk and butterfat according to the form in which, or the purpose for which, such skim milk and butterfat was used or disposed of as Class I, Class II, or Class III milk.

Milk is received by handlers directly from dairy farmers, from other handlers, and from other sources. Milk from all these sources is commingled in handlers' plants. It is necessary, therefore, to have a plan for allocating the uses of milk to each source of supply in order to afford a means to establish the classification of producer milk and to apply the classified pricing plan.

The products included in Class I milk are required by health authorities in the marketing area to be obtained from milk or milk products from "Grade A" sources. The extra cost of getting quality milk produced and delivered to the market in the condition and quantities required makes it necessary to provide a price for milk used in Class I products considerably above the manufacturing milk price. This higher price should be at a level which will yield a blend price to farmers that will encourage production of enough milk to meet market needs.

In accordance with these standards, the Class I milk should include all skim milk and butterfat disposed of in the form of milk, flavored milk, and skim milk. Class I, however, should not include any of the above products which are sterilized and in hermetically sealed containers. Fluid milk products to which extra skim milk solids have been added, and frozen or concentrated milk disposed of for fluid use likewise would be included as Class I milk. Any skim milk and butterfat not accounted for in either Class II or Class III also would be included in Class I.

Class II should include cream, sour cream, half and half, buttermilk, chocolate drink, and acidophilus milk. The distinction between Class II products and products included in Class I is that the marketing area health authorities permit the use of milk products from uninspected sources in the preparation of products herein designated as Class II. A separate Class II classification is necessary, therefore, so that a separate price may be applied consistent with the somewhat lower value of such products in this market.

Producers proposed that the skim milk and butterfat in the products herein designated as Class II dispositions be included in Class I. They asserted that Florida statute requires that these products be made from Grade A milk. However, the Director of Milk Industry for the Florida Department of Agriculture stated that, in practice, it is not required that Grade A milk be used in the manufacture of these Class II products. Historically, the products herein designated as Class II have been included in a separate classification in Florida and priced significantly below the Class I price. Both the Tampa Bay and Southeastern Florida orders have a separate Class II classification for these products. No change has taken place in the application of the State statute to require any different classification for these products in the Upper Florida order than is now provided under the other two Federal orders in the State or from what has been historically the practice in the market. The producer proposal to include these Class II products in the Class I classification is therefore denied.

Some nonfat milk solids are utilized, through reconstitution or fortification, in the preparation of Class I and Class II products distributed in the marketing area. For purposes of accounting for the skim milk required to produce the product, the added nonfat milk solids should include the normal quantity of water originally associated with the solids. The volume of the reconstituted or fortified product classified as Class I or Class II, whichever is applicable, would be a quantity equal to the volume of the same product made without the addition of nonfat milk solids. The remaining volume of the product, which represents the skim milk equivalent of added nonfat milk solids, should be classified as Class III.

Class III should be all skim milk and butterfat used to produce frozen desserts (e.g., ice cream and ice cream mix), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, and sterilized products in hermetically sealed containers.

Handlers have inventories of milk and milk products at the beginning and end of each month which enter into the accounting for current receipts and utilization. The accounting procedure would be facilitated by providing that month-end inventories of fluid milk products and Class II products be classified in Class II milk. Such inventories would be subtracted, under the allocation procedures, from any available Class II in the following month. The higher use value of any such skim milk and butterfat allocated to Class I in the following month will be reflected in returns to producers.

Inventories should include all the skim milk and butterfat in bulk and packaged fluid milk products and Class II products. Since the disposition of skim milk and butterfat in nonfluid milk products has been accounted for when used to produce a manufactured dairy product (and classified as Class III milk), such skim milk and butterfat should not be included in inventories.

Inventories of fluid milk products and Class II products on hand at a plant at the beginning of the first month in which the order becomes effective or during any month in which a plant becomes regulated for the first time should be allocated to any available Class II utilization of the plant during the month. This will preserve the priority of assignment of cur-

rent producer milk receipts to current Class I utilization.

The proposed method of handling inventories is identical with that provided in the Tampa Bay order. In urging its adoption, handlers stressed the desirability of having inventories handled in the same manner in these adjacent orders.

Producers proposed that ending inventories be classified in Class I and that the differences between the Class I prices in each month be taken into account when pricing inventories classified in Class I in the following month. As outlined at the hearing, it was not shown that application of the order would be facilitated or that producers would realize any significant advantage by classifying inventories in Class I.

The fluid milk products and Class II products contained in inventory and classified in Class II might be used in the following month in a Class I, Class II, or Class III classification. On any such inventory used in Class I in the following month, handlers must pay the difference between the applicable Class I price in the month it was utilized and the Class II price at which it was priced in the preceding month. Under the three-classification system provided in the Upper Florida order, this manner of handling inventories will tend to work out more practicably and equitably than classifying closing inventory in Class I in the manner proposed by producers. The producer proposal, therefore, is denied.

Skim milk and butterfat in fluid milk products and Class II products dumped or disposed of by a handler for livestock feed should be classified as Class III milk. Such outlets often represent the most efficient means for disposing of surplus skim milk. Transportation and handling costs are such that it is uneconomical to ship relatively small quantities of unneeded skim milk to trade outlets for surplus skim milk. In the case of route returns of such products as homogenized milk and chocolate milk, it is difficult and impractical to salvage the butterfat for further use. Such butterfat which is not salvageable should be classified as Class III when dumped or disposed of for livestock feed.

It would not be practicable to permit in an unlimited manner the dumping of skim milk and butterfat by pool plant handlers. Neither would it be appropriate to classify such skim milk and butterfat, for which no better outlet is available, in other than Class III. Accordingly, the order should clearly specify a Class III classification for skim milk and butterfat dumped, provided that the market administrator is notified in advance and afforded the opportunity to verify the dumping.

Waste and loss of skim milk and butterfat experienced in plant operations are referred to as "shrinkage." Since shrinkage represents disappearance of milk for which the handler must account but for which no direct return is realized, it should be considered as Class III milk to the extent that the amount is reasonable and is not the result of incomplete or faulty records.

The maximum shrinkage allowance in Class III at each pool plant should be 2 percent of producer milk (except that diverted to a nonpool plant or for which a cooperative association is the handler), plus 1.5 percent of producer milk from a cooperative as a handler and bulk fluid milk products from pool plants of other handlers and less 1.5 percent of bulk fluid milk products transferred to other plants (except pool plants of the same handler). A 1.5 percent shrinkage allowance would be allowed on bulk fluid milk products received from other order plants and unregulated supply plants (exclusive of the quantity for which Class II or Class III utilization is requested by the handler).

Plants which are operated in a reasonably efficient manner and for which accurate records of receipts and utilization are maintained should not have plant losses in excess of the maximums provided. Any shrinkage in excess of the maximums should be classified as Class I milk. This is reasonable and necessary to strengthen the classified pricing plan and will tend to encourage maintenance of adequate records and efficient handling of milk.

As provided elsewhere in this decision, a cooperative would be the handler for milk delivered from producers' farms to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative. When a cooperative is a handler under such conditions, the operator of a pool plant receiving this bulk tank milk directly from the farm would settle with the pool and the cooperative for such milk in the same manner as a receipt from producers. However, the full 2 percent allowance for shrinkage would be permitted the handler only if he is purchasing the milk on the basis of farm weights and has so notified the market administrator. Otherwise, the maximum shrinkage in Class III allowed the handler on such milk would be 1.5 percent, and the cooperative would be responsible for any difference between the gross weight of producer milk received in the tank truck at the farms and that delivered to pool plants. This procedure is followed in a number of other Federal orders and provides a reasonable basis for the allocation of the shrinkage allowance in those instances wherein the cooperative is the responsible handler with respect to milk picked up at producers' farms in bulk tank trucks.

In those instances in which a pool plant operator is not purchasing farm tank milk (from a cooperative as a handler) on the basis of farm weights, any difference between the quantities of producer milk determined at the farm and ascertained as physically received by the operator of the pool plant would be considered a receipt of producer milk by the cooperative at the location of the pool plant. The cooperative would report such differences, which may reasonably be expected to be within 0.5 percent of the quantity of producer milk determined on the basis of farm weights during the month, to the market administrator for inclusion in the monthly pool computation. Up to 0.5 percent of the total producer farm tank milk involved would be reported and pooled as Class III; any such difference in excess of the maximum allowable Class III shrinkage of 0.5 percent would be Class I. The cooperative would be responsible for settling with the producer-settlement fund for the total quantity of shrinkage it reported. If the quantities of bulk tank milk physically received at a pool plant from a cooperative during the month is the same as or greater than farm weights, the cooperative would have no settlement to make with the producer-settlement fund on such milk. However, in those instances wherein the quantities of milk physically received at pool plants are greater than the farm weights, the pool plant operator's obligation to the cooperative and the producer-settlement fund would be on the basis of the weights ascertained at his plant.

It is appropriate to limit the volume of unregulated supply plant milk and other order milk that may be classified in Class III as shrinkage since these types of receipts are allocated pro rata to class uses along with quantities received from pool plants and producers. Under the allocation system provided, such other source milk will share with producer milk in any shrinkage allocated to Class I when the specified Class III shrinkage limitations are exceeded. No specific shrinkage limit is necessary on unregulated or other order milk that does not share a pro rata assignment and thus is allocated first to Class III uses, since the allocation procedure insures assignment of such milk to Class III in an amount at least equal to the shrinkage that may be associated therewith.

To insure an equitable assignment of total shrinkage to the two categories of receipts (i.e., receipts for which there is a percentage limitation for Class III shrinkage assignment and receipts for which there is no such limitation), the total shrinkage should be prorated to these two categories.

Skim milk and butterfat are not used in most products in the same proportions farmers and, therefore, should be classias contained in the milk received from fied according to their separate uses. The skim milk and butterfat content of milk products received and disposed of by a handler can be determined through certain testing procedures. Some products such as ice cream and condensed products present a difficult problem of testing in that some of the water contained in the milk has been removed. It is desirable in the case of such products to provide an appropriate means of ascertaining the amount of skim milk and butterfat used to produce such products. The accounting procedure to be used in the case of concentrated milk products such as condensed milk or nonfat dry milk should be based on the pounds of milk or skim milk required to produce such product.

Skim milk and butterfat used to produce Class III products should be con-

sidered to be disposed of when the Class III product is produced. Handlers will need to maintain stock records on such products, however, to permit audit of their utilization records by the market administrator so that verification of such Class III uses may be made. If a handler fails to keep the necessary records for verification purposes, the skim milk and butterfat will be reclassified as Class I milk.

Each handler must be held responsible for a full accounting of all his receipts of skim milk or butterfat in any form. A handler who first receives milk from dairy farmers should be held responsible for establishing the classification of and making payment for such milk. Fixing responsibilities in this manner is necessary to effectively administer the provisions of the order.

Except for the quantities of shrinkage that may be classified in Class III, all skim milk and butterfat for which the handler cannot establish utilization should be classified as Class I milk. This provision is necessary to remove any advantage that might accrue to handlers who fail to keep complete and accurate records and to assure that dairy farmers receive payment for their milk on the basis of its use. Accordingly, the burden of proof should be on the handler to establish the utilization of any milk as other than Class I.

Transfers. Some Class I or Class II items may be disposed of to other plants for Class III use. It is necessary, therefore, to provide specific rules so that the classification of such transfers may be determined under this order.

Fluid milk products and Class II products transferred from a pool plant to the pool plant of another handler should be classified as Class I milk unless utilization as Class II or Class III milk is claimed for both plants on the reports submitted for the month to the market administrator. However, sufficient Class II or Class III utilization must be available at the transferee plant for such assignment after the allocation of all other source milk at such transferee plant during the month. Moreover, if other source milk of the type to which a surplus value inherently applies (such as nonfat milk solids) has been received at the shipping plant during the month, the skim milk or butterfat in fluid milk products or Class II products involved in such transfer should be classified so as to allocate the least possible Class I utilization to such other source milk. If the shipping handler receives other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

Fluid milk products or Class II products transferred or diverted to a nonpool plant (other than transfers to the plant of a producer-handler, an exempt distributing plant, or an other order plant) should be classified as Class I milk unless certain conditions are met. The operator of the nonpool plant, if requested, should make his books and records available to the market administrator for the purpose of verifying the receipts and utilization of milk and milk products in such nonpool plant. Provision for verification by the market administrator is reasonable and necessary to insure proper application of the classification procedures prescribed in the order.

Any Class I utilization disposed of on routes in this marketing area from the nonpool plant should be first assigned to fluid milk products transferred from pool plants and then pro rata to receipts from all other order plants and last to receipts from dairy farmers who the market administrator determines constitute the regular source of Grade A milk for the nonpool plant.

Any Class I utilization disposed of on from the nonpool plant on routes in the marketing area of another Federal order should be assigned to fluid milk products transferred or diverted from plants fully regulated by that order, then pro rata to fluid milk products received from plants regulated by this order and all other Federal orders and thereafter to the nonpool plant's regular Grade A dairy farmers.

Any Class I utilization remaining in the nonpool plant after the above assignments should be assigned to the plant's regular Grade A dairy farmers and then pro rata to unassigned receipts from plants regulated by this order and other orders.

After the above assignments to Class I are made, any remaining receipts of fluid milk products from pool plants would be classified in sequence as Class III and then Class II. Also, any Class II milk which is not assigned pursuant to the above sequence would be classified as Class II.

The method herein recommended for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer provision of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

In the case of fluid milk products or Class II products transferred from pool plants to other order plants, specific rules are necessary to provide equitable treatment to the handlers in both orders and coordinate the classification under the orders.

Such products transferred to an other order plant in excess of receipts from such plant in the same category (packaged, bulk designated for surplus disposal, or bulk milk not so designated) should be classified in the comparable classes to which allocated under the other order. If the operators of both the transferor and transferee plants so request, transfers in bulk form should be classified as Class II or Class III to the extent that Class II or Class III utilization (or comparable utilization under such other order) is available for such assignment under the allocation provisions of the transferee order. Such requests should be filed with the respective market administrators with their reports of receipts and utilization for the month.

If information concerning the classification to which the products transferred are allocated under the transferee order is not available to the market administrator for purposes of establishing classification under this order, then classification of fluid milk products and Class II products transferred should be as Class I and Class II, respectively, subject to adjustment when such information is available. If the transferee order provides for more than two classes of utilization, allocations to a class consisting primarily of fluid milk products shall be classified as Class I, and allocations to other classes should be classified in a comparable classification as Class II or Class III.

If the form in which a fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification should be in accordance with the form in which it leaves the transferor plant. This would be the case where the classification of a product differs in the shipping and receiving markets and according identical classification is not possible. These differences exist primarily because the health authorities in different areas have varying requirements with respect to the use of Grade A milk in some milk products. Hence, the order provisions must be designed to accommodate the differences in classification which might exist in this order compared to any order market from which such product is received.

Allocation. Because the value of producer milk is based on its classification, the order must prescribe an assignment of receipts from all sources during the month to establish such classification.

The system of allocating handlers' receipts to the various classes must be similar to that adopted in the decisions issued June 19, 1964, for 76 milk orders, of which official notice has been taken. These decisions were designed to integrate into the regulatory plan of each of the orders milk which is not subject to classified pricing under any order, and to apply the regulatory plan of each of the orders to milk regulated under another order which is disposed of from the other order plant on routes in the marketing area, or is received at a fully regulated plant. Inasmuch as those decisions set forth the standards for dealing with unregulated milk under Federal orders generally, it is desirable that the system of allocation under this order be similar. Further, the treatment of other order milk should conform with the plan included in those decisions so as to coordinate the applicable regulations on all movements of milk between Federal

order markets. Producers and handlers recognized the necessity for such coordination and proposed allocation provisions similar to those adopted in other orders.

Except for relatively minor variations to accommodate this individual market's situation, the general scheme of allocation must be based on the considerations of coordination among markets and uniform treatment of unregulated milk in the several markets.

When a handler receives a Class II product from nonpool plants in the same month that he utilizes producer milk to make Class II products, there is usually an intermingling of such products at the plant. However, some handlers may, at times, receive Class II products from nonpool plants for Class III utilizations in their plants. It would be appropriate in such instances to subtract these receipts from nonpool sources from the handler's available Class III utilization if the handler so requested it. Otherwise it is not possible to ascertain what proportion of the Class II products from each source was actually used in the handler's Class II and Class III dispositions. To give priority in the assignment of a handler's Class II utilization to either the Class II products produced at his plant or those obtained from nonpool sources might often result in inequities, under different circumstances, to both producers and handlers. Because Class II products from all sources are intermingled at the plant and since such products may be disposed of in either Class II or Class III utilizations, equity to both producers and handlers will be best achieved by allocating the available Class II utilization of a handler on a pro rata basis to the skim milk and butterfat in Class II products received from nonpool plants and those produced at the plant.

Milk received at regulated plants from unregulated plants. When unregulated milk eligible for Class I distribution in the marketing area is received at a pool plant, provision must be made for its allocation to the total available classification of such pool plant and for providing an appropriate rate of payment to the producer-settlement fund on any such milk allocated to Class I.

The order should provide that fluid milk products moved from an unregulated plant to a pool plant be classified as Class II or Class III milk if so reported by the operator of the regulated plant. Milk may be purchased by a pool plant operator from an unregulated plant either for use in his manufacturing operation or in connection with his Class I or Class II requirements. When the purchase is for Class II or manufacturing uses, the order should accommodate this by providing that such milk be allocated to the indicated class utilization in the pool plant. This treatment of unregulated milk further serves to accommodate unregulated plants which have surplus milk but do not have manufacturing facilities. Hence, it will make available as an outlet any manufacturing facilities of pool plants without involving the unregulated plant in the regulation. When, however, Class II or Class III utilization in a regulated plant is insufficient for the assignment of all fluid milk products from unregulated plants to the agreed manufacturing use, the remainder, of course, must be allocated to Class I.

Other categories of milk receipts assigned first to Class III use (down allocated) should include receipts from producer-handlers, receipts from exempt distributing plants, receipts without Grade A certification, and reconstituted milk. The reasons for such assignment are explained in subsequent findings on these specific types of receipts.

With respect to the general category of milk received from unregulated plants (not producer-handlers or exempt distributing plants, however) the order should provide that (within limits) unregulated milk received at a pool plant, which is not specifically designated for manufacturing use, be assigned a classification which is pro rata to regulated milk received by the operator of such plant. This should be provided because classification of bulk milk cannot be determined on the basis of its inherent characteristics as either Class I (i.e., in bottles) or as surplus (i.e., as in manufactured products). Its classification depends upon its utilization by the handler who receives it. Unless the regulated handler accepts the milk for Class II or III use, a method as described herein must be provided for assigning the unregulated bulk milk to classes of use. By assigning it pro rata with regulated milk (within limits), its indeterminate character as Class I, II, or III will be recognized up to the limit provided.

A limit must be placed on the amount of unregulated milk which may share full classification with regulated milk. The receipt of unregulated milk in a regulated handler's operation is always a source of danger to the regulatory plan. Handlers often obtain unregulated milk because it is a cheaper source of supply than regulated milk. Unless some limitation is placed on the volume of unregulated milk that may be prorated, a handler with a supply of regulated milk adequate for his Class I requirements could acquire cheaper unregulated milk to increase his manufacturing uses. This milk would share in his Class I utilization while an equal volume of regulated milk would be assigned to the expanded surplus use. This would impair the effectiveness of the regulation.

The limit placed on the amount of unregulated milk to be assigned pro rata with regulated milk is such that when, as a result of proration or assignment, as much as 20 percent of all regulated milk in the handler's plant is assigned to Class II and Class III, all additional unregulated milk will then be assigned to such lower classes. A reserve of milk for fluid requirements on a marketwide basis more or less than 20 percent of all handlers' receipts may be required, depending upon seasonal and other considerations. An individual handler associated with a regulated fluid market (whose main purpose is to furnish Class I milk to the market) will not need unregulated milk for the purpose of maintaining an adequate supply to service Class I sales in amounts which will increase his reserve above 20 percent of his total receipts in any given month. Whenever a handler has a milk supply such that 20 percent of his receipts are in Class II and Class III, he is fully supplied for furnishing a regulated Class I market. Even though a situation could conceivably arise where, because of the disruption of normal supplies, a handler receives milk from unregulated sources in excess of the quantities that may be prorated, the attainment of effective regulation nevertheless requires the imposition of this limit.

It is provided that in assigning unregulated bulk milk for purposes of classification, the overall utilization of the handler at all of his plants regulated under the order [2] (rather than the utilization at a single plant) should be used. This is necessary for the same reasons, set forth later in this decision, which apply to receipts of milk from plants regulated by other orders.

Payment at the difference between the Class I and uniform prices should be made by the receiving handler into the producer-settlement fund on the portion of unregulated milk which is assigned to Class I through proration. There can be no question that the Class I price basically should apply to both regulated and unregulated milk used in a fully regulated plant as Class I milk. To attribute any different valuation on the unregulated milk would automatically result in inequity as compared with regulated milk similarly utilized.

Although there is no room for doubt as to the need to attribute a Class I value for any milk so utilized (the minuend), the proper credit to be allowed to milk from unregulated plants is not clear; i.e., what subtrahend should be used in such a payment formula. It may be expected that in many situations a payment at any lesser rate than the difference between the Class I price and the value of such milk as surplus would give unwarranted price advantage to unregulated milk over producer milk similarly utilized.

Milk at unregulated plants may be purchased from dairy farmers on a flat price basis without regard to use classification. Although most of the milk so purchased by the unregulated plant operator may be intended for local distribution outside the regulated market, excess milk supplies on a daily and seasonal basis will arise as they also do in regulated plants.

This frequently leaves excess milk at unregulated plants which is truly surplus to the normal fluid needs of those plants. This situation is accentuated at certain times of the year when there are characteristic seasonal increases in the production of milk without corresponding increases in the demand for milk. If it were not for the sale in the regulated market, such milk would have no higher

[2] Such total utilization would be subject to certain prior deductions for receipts assigned to the surplus classification as mentioned in prior findings.

value to the plant operator than its surplus value. In such circumstances, the operator of such an unregulated plant, including the fringe distributor, has great incentive to "dump" his surplus milk into the regulated market or its supply system at any price higher than a surplus price and thereby obtain a competitive advantage for such milk over regulated milk. Regulated handlers cannot similarly convert otherwise surplus Class III milk into Class I utilization without accounting to the producer-settlement fund at the full difference between these two utilizations, i.e., they account at Class I rather than Class III. There would then appear to be substantial justification for the same rate of charge against milk from unregulated plants obtained and used in similar circumstances.

Even though surplus milk obviously is available to handlers from time to time, there is no indication that they have exploited their opportunities to use such milk. It is concluded, therefore, in the light of the decision of the Supreme Court in the Lehigh Valley case, and because of the administrative difficulty in determining whether particular milk from an unregulated plant utilized as Class I in this market actually had only a surplus value or cost at source, that the charge should be limited to the difference between the Class I price and the uniform price, both adjusted for butterfat content and the location of the unregulated plant from which the milk was received. Although the use of the uniform price as the subtrahend will not assure complete removal of the price advantage which may exist for some milk for the reasons just stated, it nevertheless will serve to minimize this advantage in such cases, and generally should be an equitable means of providing a reasonable measure of protection to the regulatory plan. If subsequent experience shows that such payment is not protecting the regulatory plan, then on the basis of specific evidence, another rate of payment or another plan will need to be devised.

As a means of carrying out the equalization provided by market pooling, regulated handlers are required to pay the uniform price to their own producers and, in addition, are required to pay to the producer-settlement fund the full difference between the Class I price and such uniform price on all regulated milk classified as Class I because of its use as fluid milk. Unregulated milk similarly used as Class I milk by a regulated handler likewise should carry a payment to the producer-settlement fund at least at the same rate as that required of regulated milk. If the handler buys regulated milk at a price in excess of the uniform price, he receives no credit for this excess payment in accounting to the producer-settlement fund. Neither should he receive credit for any amount paid for unregulated milk in excess of the uniform price. Both the regulated and unregulated milk, therefore, will be credited at only the uniform price in accounting to the producer-settlement fund.

These payments are not unfair or burdensome to the dairy farmer supplying the unregulated plant, whose milk is used as Class I milk by a regulated handler. The allowance of a credit for milk from unregulated plants used as Class I by the regulated handler at the uniform price level will provide opportunity to the unregulated plant operator to pay his dairy farmers at least the uniform price on these Class I sales. The order cannot, of course, guarantee to the dairy farmer that his purchaser in fact will pay this full uniform price to him.

The order must contain provisions of this kind which serve to adequately relate to the total scheme of regulation that milk received by regulated handlers which is not subject to full regulation. Otherwise, the very existence of the market pool order may establish the condition which makes impractical the attainment of the regulatory objective of stabilizing the market in the manner prescribed by the statute. Consequently, the Secretary must protect, to the extent consistent with the Act, the regulatory plan in any marketing area against defeat or impairment because of the introduction into the marketing area of milk from unregulated sources which is not subject to full regulation.

There may be instances where a distributor is subject to State milk control and pays the State minimum price on all of his receipts of milk including some that is assigned as Class I in a federally regulated market. The method of assignment and rate of payment into the producer-settlement fund applicable to other unregulated milk must also be applied to this source of "unregulated" milk even though the State regulated distributor may have paid a price for the Class I milk disposed of in the Federal order market that was higher than the uniform price established by the Federal order. This is necessary for the same reasons as apply to any operator of a plant who, for whatever reasons, pays a price for milk higher than the Federal order uniform price.

The evidence does not show that packaged milk is received from unregulated plants. However, in case such a contingency should arise in the future, a rule for dealing with it must be provided. In the absence of evidence as to a specific method of dealing with such receipts, it should be provided that packaged milk received from an unregulated plant will be treated the same as bulk milk.

Producer-handler surplus, reconstituted milk, non-Grade A milk. Certain milk by its very nature must be treated as surplus when received at market pool plants regulated by a Federal order and, therefore, it must be assigned a surplus value. Such sources include milk received at a regulated plant, in either bulk or packaged form, from a producer-handler (under any Federal order) and exempt distributing plants. Another source is milk produced by the reconstitution to fluid form of manufactured dairy products, such as fluid skim milk made by the addition of water to nonfat dry milk. Still another source is milk of manufacturing grade (non-Grade A milk) which is not eligible for disposition for fluid consumption in the market. As to milk from these sources, a payment into the producer-settlement fund at the difference between the Class I and surplus prices must be required of the receiving handler when such milk is allocated to Class I, following "down-allocation" to the extent it can be absorbed in lower priced uses.

In this order as in most other orders, the producer-handler is exempt from the pooling and pricing provisions. This exemption is based on the principle that the producer-handler assumes the burden of disposing of his milk supplies in excess of his Class I milk needs. Being exempt from these provisions of the order makes it possible for the producer-handler to retain the full return from his Class I sales of milk on routes even though such sales are in competition with regulated handlers.

Producer-handlers are primarily engaged in the distribution of Class I and Class II milk. Normally they do not maintain facilities for processing and manufacturing any milk produced in excess of their fluid needs. Because of seasonality of milk production and for other reasons, producer-handlers will produce some milk in excess of their needs. The best available outlets for this surplus milk usually are to fully regulated plants in the market. In view of a producer-handler's limited capacity for utilizing excess supplies of milk, it is often economically advantageous for him to dispose of such excesses at surplus prices to regulated handlers. Such milk, therefore, would be available to regulated handlers at surplus prices. Under these circumstances, it would not be appropriate to allow the regulated handler credit from the producer-settlement fund at more than a surplus price for any such purchases.

Inasmuch as a producer-handler's appropriate competitive relationship with other handlers and with other producers depends upon the producer-handler assuming the burden of his own surplus, an equitable relationship among the several groups would not be achieved if a producer-handler were allowed to dispose of his surplus and obtain the uniform price for such surplus. As long as the producer-handler has the advantage of enjoying the full benefit of his own Class I route sales without sharing them with other producers, he should not also receive Class I benefit from a market pool, at the expense of producers, for any of his milk which he is unable to sell in such way. Surplus milk purchases from producer-handlers operating under another order has the same potential for creating disorderly marketing conditions as surplus from producer-handlers operating under the same order. Therefore, no distinction in treatment for such milk should be provided.

The order should provide, therefore, that milk received from producer-handlers at a pool plant should first be assigned to Class III and then Class II milk at the pool plant. If any is then assigned to Class I, a payment into the

producer-settlement fund at the Class I-surplus price difference should be applied. Such rate of payment on receipts by federally-regulated handlers of milk from producer-handlers was ratified by Congress at the time provisions of the Agricultural Adjustment Act of 1933, as amended in 1935, authorizing the issuance of milk orders, were reenacted by the passage of the Agricultural Marketing Agreement Act of 1937. During the period between August 24, 1935, and June 3, 1937, the effective date of the latter Act, six Federal milk orders were issued under such Agricultural Adjustment Act. Two of such milk orders (Greater Kansas City, Mo., and Fall River, Mass.), placed in effect during this period, contained provisions requiring handlers who used bulk milk received from producer-handlers in other than the lowest priced classification to pay the difference between the class use price and the lowest class (surplus) price for such milk as part of the handler's total obligation for milk. Such payment was distributed, together with the classified value of producer milk of the handler, through the market pool.[3]

From time to time, exempt distributing plants will have production from their farms in excess of their fluid milk requirements. Such excess production could not be depended upon by handlers in the market as either a regular supply of milk or a supplemental supply during periods when the market may be short of milk. It would clearly be surplus milk incidental to the operation of the exempt distributing plant. Accordingly, the order should provide that milk received at pool plants from such exempt operations be allocated first to Class III and then Class II milk at pool plants. Any such milk allocated to Class I at a pool plant would be subject to a compensatory payment at the difference between the Class I and surplus prices. The University of Florida spokesman requesting that its and similar governmental operations be designated exempt distributing plants testified that such operations would expect to receive credit only at the Class III price for any milk which they may deliver to pool plants.

A surplus value likewise is properly assigned to reconstituted milk (for instance, the result of combining nonfat dry milk or condensed milk with water). The products used in such reconstitution process are made from milk which always carries a manufacturing, or surplus value. Producer milk used to produce such products is priced as surplus. Since the milk used to produce these products is originally priced as surplus milk, payment into the producer-settlement fund at the difference between the Class I and surplus price is necessary to insure competitive equity with producer milk when reconstituted milk is used in Class I. No recognition should be given to processing costs involved in the manufacture of the products derived from unregulated milk and used in reconstitution, since similar costs are incurred in processing producer milk into such products.

Nonfat dry milk and condensed milk also may be added to fluid milk products to increase the nonfat solids content, thus making so-called "fortified" fluid milk products. The incentive for handlers to use nonfat milk solids to fortify fluid milk products arises from the specific demands of consumers. The increased emphasis on low-fat diets and the high nutritional value of nonfat solids in relation to their weight have contributed to the increased demand for added nonfat milk solids in fluid milk products.

Such products are distinguished from reconstituted products, however, in that the resulting volume of fluid product is not increased appreciably since no water is added. The essential economic difference in the use of nonfat milk solids for fortification of fluid milk products versus their use for reconstitution is recognized in the class use definitions. The class use definitions, which provide that the fluid equivalent of the added solids shall be Class III (excepting the minor quantity of increase in volume of the fortified product), and the allocation provisions which would assign the fluid equivalent of solids used to Class III milk, accomplish appropriate accounting and result in a proper obligation against the handler.

Milk of manufacturing grade is not eligible for Class I uses under the requirements of the health authorities in the market. In dual-purpose plants, however, such milk could find its way into Class I in the pool plant. The appropriate value which attaches to such milk is the surplus price because such price accurately reflects its value as manufactured milk only. The manufacturing value is the price which processors pay for this grade of milk. Receipts at a pool plant of manufacturing grade milk, therefore, should be assigned first to use in Class III. But should any manufacturing grade milk be assigned to Class I, a payment into the producer-settlement fund at the difference between the Class I and surplus prices likewise would be necessary to remove the competitive advantage this milk would have in relation to producer milk. Health authorities require that the source of milk eligible for fluid consumption (Grade A milk) must be identified. Any receipts from unidentifiable sources must therefore be treated as milk of manufacturing grade.

Receipts from other order plants. The order should provide for the assignment to Class I (i.e., to be deducted from gross Class I milk in the receiving plant) of 98 percent of packaged fluid milk products received from a fully regulated plant under another order. The remaining 2 percent should be assigned to Class III. The 2 percent may be considered as a safeguard against possible "over-assignment" of milk to Class I in the originating market (i.e., the assignment to such market of a transferred quantity which is greater, from a practical standpoint, than normally can be disposed of as Class I in the receiving market). Since it is reasonable to expect some route returns will be associated with intermarket transfers just as there are in connection with milk locally processed in the receiving market, an allowance of 2 percent for such returns, which must fall into surplus use, should be included to avoid such overassignment in Class I.

Prior to amendments to orders effective August 1, 1964, a variety of classification methods had applied to intermarket transfers of bulk milk. Such a variety of methods could not achieve the objective of appropriately integrating into the respective regulatory schemes in a uniform and consistent way intermarket shipments of regulated milk. Following the pattern of these amendments, a Class II or Class III classification should apply whenever the parties involved agree that the shipment involved is for one or the other of these class uses. A higher classification would result only when it is found, on verification, that some portion of the milk could not have been used in the classification claimed. The portion then would be reclassified as Class I.

Interorder shipments of bulk milk which are not classified as Class II or Class III by agreement should be classified as Class I, Class II, and Class III on the basis of the marketwide utilization of producer milk. Such classification should be limited, however, so that the quantity of milk assigned to Class II and Class III is not greater than the receiving handler has utilized in such classes.

The order should not provide for marketwide proration of milk received from an other order plant when the receiving handler has a greater proportion of milk in Classes II and III than the average in the receiving market. Marketwide proration of receipts of milk from other markets is designed to deal primarily with milk received by a handler who is supplementing his local supply for Class I use. Marketwide proration would tend to encourage unduly and uneconomically the importation of milk by a handler with a higher proportion of milk in Classes II and III than the market average because it would assign a disproportionate share of local producers' milk to such classes.

The particular classification which is given to bulk transfers from other orders will be within the control of the receiving handler and there will be no monetary obligation placed on him for this milk by the receiving market order. Inasmuch as other Federal orders from which milk might be received have provisions corresponding to those herein adopted, the situation will not arise where milk

[3] 7 U.S.C. section 672, which contains the codified language of section 4 of the Agricultural Marketing Agreement Act of 1937, as amended, states in paragraph (a) "Nothing in this Act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to or any provision of, or any act of the Secretary of Agriculture in connection with any such agreement, license or order which has been executed, issued, approved, or done under sections 601–608, 608a, 608b, 608c, 608d–612, 613, 614–619, 620, 623, 624 of this title, but such marketing agreements, licenses, orders, regulations, provisions, and acts are expressly ratified, legalized and confirmed."

transferred would be classified as Class I in the shipping market and Class II or Class III in this market since the same classification would apply in both markets.

Assigning the bulk receipts from other order plants to the handler's system utilization will prevent a handler with more than one plant from discriminating against either his own producers or those supplying the other Federal order market by importing milk not serving a bona fide need for Class I use. It should be provided, therefore, that assignments of interorder bulk milk should be made over all utilization of milk at all the handler's regulated plants in the receiving market.

Handlers who receive milk from other order plants or from unregulated plants should be precluded from transferring such milk to regulated plants of other handlers at a utilization higher than would have resulted from a direct receipt at the second plant. Unless the order so provides, it would be possible to use a plant with high Class I utilization as a conduit for receiving milk from other order plants and unregulated plants and avoid the allocation provisions applicable to milk received directly from such plants.

In any month in which bulk milk is received in the market (without agreement as to Class II or Class III classification on the part of the handlers involved in the transfer) it will be necessary that the administrator in the shipping market know the classification of such milk on or about the date when handler reports are due under that order. Since the reporting dates under orders are similar, it is possible the market administrator may not have complete information to compute his exact marketwide utilization of producer milk by the time the classification of a transfer is needed by the administrator in the shipping market. It is provided, therefore, that, when necessary, the market administrator will estimate the marketwide utilization of producer milk for purposes of determining the allocation of bulk milk received from other orders. It is provided that such estimate will be made and publicly announced to the nearest whole percentage and, for this purpose, will be final.

Federal orders generally provide that the administrator of any order receiving bulk milk from another Federal order will promptly notify the administrator of the shipping market of the allocation of such milk so that a compatible classification on such milk may be applied under the shipping orders. Information as to the classification of such milk must be passed on by the respective administrators to the handlers involved so that handlers may know the basis of their obligation on such milk. This order should provide similarly for such interchange of information.

Situations may arise where plants subject to this and another Federal order ship milk back and forth during the same month (i.e., each plant ships milk to the other plant). If such shipments are of a similar nature (packaged milk, bulk milk designated for surplus disposal, or bulk milk not so designated) only transfers of milk between two plants which are not offset by an equal quantity of milk received from the second plant need be considered. Since the classification of this milk in the shipping market is based on its allocation in the receiving market, only the net difference in transferred quantities (in terms of butterfat and skim milk) need be allocated in the receiving market. Otherwise, from a mechanical standpoint, neither market could allocate receipts of milk to classes until all milk had been classified, including the shipment to the other market.

(c) *Class prices*—(1) *Class I price.* The price for Class I milk should be computed by adding $2.80 to a basic formula price (Minnesota-Wisconsin manufacturing milk price series).

The method of adding a differential to such basic formula price in determining the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. Prices for milk used for fluid purposes in the proposed marketing area have a direct relationship to the prices paid for milk used for manufacturing purposes.

A differential over manufacturing milk prices is necessary to cover the extra costs of meeting quality requirements in the production of milk for fluid uses and in transporting the milk to the market. Moreover, it is a necessary incentive for dairy farmers to produce and deliver an adequate supply of quality milk to meet the demand for fluid milk.

Producers proposed that the Class I price be computed by adding a specified differential to a basic formula price. As the basic formula price, they proposed the Minnesota-Wisconsin manufacturing milk price series. This series is based on prices paid at a large number of manufacturing plants in each of the two States. Plant operators report the total pounds of manufacturing grade milk received from farmers, the total butterfat content and the total dollars paid to dairy farmers for such milk, f.o.b. plant. These prices are reported on a current month basis and the announced Minnesota-Wisconsin price is available on or before the 5th day of the following month. The Minnesota-Wisconsin price series is the basic formula price in 56 Federal order markets, including markets that serve as sources of supplemental milk for Upper Florida handlers.

This price series reflects a manufacturing price level determined by competitive conditions which are affected by demand in all of the major uses of manufactured dairy products. Further, it reflects the supply and demand of such products within a highly coordinated marketing system which is national in scale. The series is appropriate for use in establishing milk prices under the Upper Florida order.

Since the Class I price for the current month would be announced by the 5th day of the month, the basic formula price used in computing the Class I price should be that reflecting the Minnesota-Wisconsin price for the preceding month. This procedure is commonly used in other Federal orders.

Producers proposed that a Class I differential of $3.15 be added to a basic formula price. Handlers proposed that the Class I price be tied directly to the Tampa Bay Class I price. Under the latter scheme, the Upper Florida price during the months of August through January would be the Tampa Bay Class I price and for the remaining months, such price less 23 cents. This would result, in effect, in an annual Class I differential of $2.885 for the Upper Florida order.

The Class I price must be established at a level which, in conjunction with the other class prices, will result in returns to producers high enough to maintain an adequate, but not excessive, supply of quality milk to meet the requirements of consumers, including the necessary market reserves. The Class I price also must be in alignment with those prevailing in nearby Federal order markets. It should not be at a level, though, which exceeds the cost of obtaining milk of acceptable quality and regular availability from alternative sources.

The Class I price proposed herein (basic formula plus $2.80) will tend to maintain an adequate supply of milk for the market and will be reasonably aligned with Class I prices in nearby Federal order markets. For 1965, such price would have averaged $6.06. The Tampa Bay Class I price formula averaged $6.23 in 1965 and the average Southeastern Florida Class I price that year was $6.40.

As indicated, producers proposed a Class I differential of $3.15. This differential would obtain a Class I price 15 cents more than Tampa Bay's and only 5 cents below the Southeastern Florida Class I price. The Class I differentials under the latter orders, both of which use the Minnesota-Wisconsin price series as a basic formula price, are $3.00 and $3.20, respectively.

The difference between Class I prices proposed for the Upper Florida order and the Tampa Bay and Southeastern Florida Class I prices recognizes that Upper Florida plants are significantly nearer alternative sources of supply than plants in the other Florida order markets. Such supplies, which are not customarily available within the State, must be obtained from out-of-State sources to the north. The Upper Florida market is closer geographically to such sources of milk.

Milk qualified for fluid distribution in the Upper Florida market is available from other Federal order markets. Upper Florida handlers generally depend on other order plants for supplemental supplies. For the year ending September 1965, nearly 20 million pounds of milk were imported by them from these and other sources. If the Upper Florida Class I price is not reasonably aligned with Class I prices under these orders, regulated handlers might turn to these sources for their milk supplies even when local milk is available.

Nashville is a principal source of supplemental milk for the Upper Florida market. In 1965, the Nashville Class I

price averaged $4.64 per hundredweight for milk of 3.5 percent butterfat. Nashville is 570 miles from Jacksonville, the major distribution point and the center of the heaviest concentration of population in the proposed marketing area. At 1.5 cents per hundredweight for each 10 miles (the location differential applicable under the Nashville order), the hauling cost for Nashville milk delivered to Jacksonville is 86 cents per hundredweight. On this basis, the Nashville Class I price f.o.b. Jacksonville averaged $5.50 in 1965. This latter price gives no consideration, however, to the various other costs that would be incurred in obtaining a regular and dependable supply of milk from Nashville, or a market similarly situated, on a year-round basis.

The cost to Upper Florida handlers for milk from Nashville and from other Federal order markets will not vary significantly. This is because the Class I prices in all such markets must bear a reasonable relationship to each other. The proposed Upper Florida Class I price represents a reasonable alignment with prices in other markets from which milk may be obtained.

In excepting to the Class I price herein provided, producers contend that a price at least 10 cents higher is justified primarily on the basis that the skim milk and butterfat in Class II products (at the lower Class II price) are classified and priced as Class I under most Federal orders.

The level of the Class I price specified in a Federal order is designed to obtain an adequate supply of milk for Class I purposes plus an appropriate reserve of milk to insure against short-range fluctuation in supplies and sales. The fact that certain products often included in Class I in other markets are included in Class II in this market simply means that a lesser quantity of milk is needed for Class I. The fact that these products are in Class II provides no basis for adjusting the Class I price. On all of the evidence of the record it is apparent that the Class I price established in this order is at a level which will tend to obtain an adequate supply of milk for Class I purposes plus an appropriate reserve.

There is no need to specify in the order that the Tampa Bay Class I price shall be used as the basis for the Upper Florida Class I price. Handlers advocated this for the purpose of assuring that the Upper Florida price would not exceed the Southeastern Florida Class I price. The Tampa Bay order contains such a provision with respect to its Class I price.

Prior to July 1, 1966, and at the time of the hearing on which this decision is based, the Southeastern Florida Class I price was set at $6.625, subject to supply-demand adjustments and maximum-minimum price limits. The order was amended July 1, however, to provide that the Class I price be the Minnesota-Wisconsin price plus a Class I differential of $3.20 (31 F.R. 9045). Inasmuch as the Tampa Bay Class I price is the Minnesota-Wisconsin price plus $3.00, the Class I prices under the two orders are in a fixed relationship with each other. The proposed Upper Florida Class I price, based on a similar price formula, likewise would be in a fixed relationship with the Class I prices in the two neighboring markets.

A seasonal pricing scheme as proposed by handlers should not be adopted. Such pricing would result during certain months in substantial price differences between the Upper Florida order and the Tampa Bay and Southeastern Florida orders which use a "flat" differential. During the months when the lower differential is in effect, Upper Florida handlers, particularly those in the Orlando vicinity, would have a definite price advantage over handlers in the adjacent markets. The price relationship between the Upper Florida and the Tampa Bay and Southeastern Florida orders is developed further in the findings on location differentials.

It is proposed herein that the Upper Florida Class I price be effective only for the first 18 months in which the order is fully effective. It is appropriate that the Class I price structure be reexamined at a public hearing after the accumulation of at least 1 year's data on milk supplies and sales. At that time, sufficient experience under the order would be available to determine whether the Class I price should be adjusted. Also, sufficient data would be available to determine whether a supply-demand adjustor should be incorporated into the order to automatically vary the Class I price in relation to current supply-sales relationships.

(2) *Class II price.* The Class II price should be established by adding $1.00 to the basic formula price. This price, which is the same as provided in the nearby Tampa Bay order, averaged $4.27 in 1965.

In supporting the proposed Class II price, handlers emphasized the importance of having the same Class II price in both this and the Tampa Bay order. There was no opposition at the hearing to the proposed Class II price.

Locally produced milk is not always adequate to meet handlers' total needs. When local supplies are short, handlers obtain concentrated dairy products from other sources for further processing into Class II products at their plants.

The cost of such supplies are affected by transportation over long distances. Local producer milk supplies used in Class II compete directly with these concentrated products delivered to the marketing area. The Class II price under the order must be maintained in close alignment with the cost of these alternative supplies.

The proposed Class II price approximates the price level for Class II milk provided under the past regulations of the Florida Milk Commission and that now provided in the Southeastern Florida order.

(3) *Class III price.* The Class III price should be established by adding 15 cents to the basic formula price.

The basic formula price reflects the value of manufacturing milk in the major milk production areas of the United States. Because manufactured milk products compete on a national basis, it is important that the price for surplus uses in the market be in close alignment with similar uses nationally. Both producers and handlers supported the Class III price that is herein proposed and which is the same as that provided in the nearby Tampa Bay order.

Negligible quantities of milk for Class III uses are produced in Florida. Handlers depend on shipments of products in manufactured form for most of their Class III requirements. On these manufactured products, they incur transportation charges, although at relatively low rates in terms of dollars per hundredweight of milk equivalent.

The Class III price should be at such a level that handlers will accept and market whatever quantities of milk in excess of Class I and Class II needs may arise from time to time. The price, however, should not be so low that handlers will be encouraged to seek milk supplies solely for the purpose of converting them into Class III products.

The pricing of reserve milk as herein proposed should reflect the competitive value of reserve milk utilized for manufacturing purposes in the area and will reflect the competitive value of manufacturing milk on a national basis. It provides approximately the same price level for products included in Class III which has prevailed in this market.

(4) *Butterfat differentials.* Because of variations in the butterfat content of milk delivered by individual producers and in milk and milk products sold by different handlers, it is necessary to provide "butterfat differentials" to insure equitable payments for such variations in butterfat.

The Class I and Class II butterfat differentials should be established at 7.5 cents for each one-tenth of 1 percent variation in butterfat above or below 3.5 percent. The Class III butterfat differential should be determined by multiplying the Chicago butter price by 0.115.

The proposed Class I and Class II butterfat differentials, which are the same as those in the Tampa Bay and Southeastern Florida orders, are representative of the value of butterfat when disposed of in the fluid items included in these classes. These differentials were proposed by handlers, who emphasized the importance of maintaining the same butterfat differentials in Upper Florida as in the other Florida orders.

Producers proposed a Class I butterfat differential of 12.5 percent times the Chicago butter price. This differential, which would have averaged 7.5 cents in 1965, varied in that year from 7.2 cents in February and March to 7.9 cents in December. Historically, the Class I butterfat differential in the Florida markets has been maintained at a constant rate from month to month, as is now provided in the Tampa Bay and Southeastern Florida orders. It was not shown that the differential proposed by producers would be advantageous to them economically or would otherwise be more appropriate than the Class I butterfat differential that had been found acceptable by handlers and producers throughout Florida in the past.

The proposed Class III butterfat differential of 11.5 percent of the Chicago butter price, which is the same as that contained in the Tampa Bay order, is likewise comparable with its counterpart in other orders throughout the country. It will vary from month to month as the price of butter varies. Hence, it will facilitate the movement of butterfat in the reserve supply of milk to manufacturing outlets.

The Class II and Class III prices and the Class III butterfat differential will not be announced until after the end of the month and should be based on current month prices. Although handlers will not know the exact cost of Class II and Class III milk as it is utilized, they will know that their costs tend to follow daily and weekly dairy production prices and cost of milk to their principal competitors.

The butterfat differential to producers should be calculated at the average of the Class I, Class II, and Class III butterfat differentials weighted by the proportion of butterfat in producer milk classified in each class during the month. Thus, returns to producers will reflect the actual value of their butterfat at the class prices provided by the orders.

(5) *Solids-not-fat differentials.* In the hearing notice, producers proposed solids-not-fat (S N F) differentials. These would be applied (in the same manner as butterfat differentials) on producer milk containing more or less than 8.47 pounds of SNF per hundredweight of milk; a hundredweight of 3.5 percent milk contains about 8.47 pounds of SNF. As proposed, class prices would be adjusted for each one-tenth percent SNF above or below 8.47 pounds by 4.1 cents on Class I and 1.7 cents on Class II. These differentials were arrived at by subtracting the applicable butterfat value from each class price and dividing the remainder by the pounds of SNF in a hundredweight of 3.5 percent milk.

At the hearing, producers withdrew their proposal for SNF differentials, but asked instead that they be applied on a "dry run" basis during the first 6 months of the order. In this period, producer milk would be tested for SNF content and the market administrator would make calculations and announce what the individual producer prices would have been if the SNF differentials had been applicable. Although producers claim that testing for SNF has been perfected and is now practicable, a trial period was requested to obtain experience in the operation of an SNF program. Handlers opposed making provision in the order for an SNF differential on a dry run or any other basis.

SNF tests are not commonly made or applied in paying dairy farmers for their deliveries. No Federal order, currently or in the past, has provided for the adjustment of Class I prices or payments to producers on the basis of the SNF content of milk. The State of California was the only place cited in which some milk was paid for on the basis of its SNF content. However, no testimony was presented concerning the experience in California and whether its use there had any application to conditions in the Upper Florida market.

At least two research projects have been conducted to test consumer acceptance of milk with varying amounts of SNF. These projects, it was claimed, tended to establish that consumers found milk with a high SNF content more palatable and desirable than milk of a low or normal SNF content. None of these research projects were conducted in the Upper Florida market.

The amount of SNF in milk is generally related to the amount of butterfat in the milk. Milk with a high butterfat content contains a greater percentage of SNF than low testing milk. However, the SNF in milk does not increase directly in proportion to the increases in butterfat.

The returns of producers of high test milk are enhanced by the butterfat differentials provided in the order, which were supported by both producers and handlers. In effect, the portion of the increased returns obtained through the butterfat differentials on milk with a high butterfat content might reasonably be considered as representing compensation for the greater SNF content of such milk. If there is an even greater value for high butterfat milk than that represented by the butterfat differentials proposed, it was not established at the hearing. Moreover, there is no indication that the demand by handlers and consumers in the Upper Florida market for milk of high butterfat content is such as to justify higher prices for such milk than would be realized by the class prices and butterfat differentials in the proposed order.

It was not shown that the butterfat and SNF content of milk now produced for the market is not meeting the needs of handlers or that there is dissatisfaction among producers with the practice of paying for their deliveries on the basis of stipulated prices adjusted by butterfat differentials. Neither was it shown that it would be to the advantage of producers to provide for SNF differential provisions in the order.

The 6-month trial period for an SNF differential proposed by producers may be a worthwhile project. However, it is more appropriate that the operation of such a project be conducted outside the scope of the order. The experience thus obtained by producers and/or handlers might have some value at a future hearing in considering SNF differentials for the order.

In view of the various considerations mentioned above, no provision should be made in the order at this time to provide for SNF differentials or for instituting a 6-month trial period therefor (as proposed) within the framework of the order.

(6) *Location adjustments.* Location differentials should be incorporated into the order to provide an appropriate adjustment to the Class I and uniform prices based on the location of any plant at which producer milk or other source milk is received.

For milk received at plants outside the State of Florida and 70–85 miles from the nearer of the City Halls in Jacksonville and Tallahassee, the Class I price should be reduced 10 cents. For plants beyond the 85-mile limit, the Class I price should be reduced 10 cents plus an additional 1.5 cents for each 10 miles or fraction thereof that such plants are more than 85 miles from the nearer of the City Halls in Jacksonville and Tallahassee. The Class I price should be increased 10 cents at plants south of the Florida counties of Dixie, Gilchrist, Alachua, Putnam, or St. Johns.

Class I milk products, because of their bulky, perishable nature, incur a relatively high transportation cost if such products or the milk used to produce them are moved considerable distances. Milk delivered directly by farmers to plants in or near the urban centers in the defined marketing area, therefore, is worth more to a handler than milk which is received from farmers at a plant located many miles from the market. This is so because in the latter instance, the handler must incur the additional cost of moving that milk to the central market. Under these conditions, the value of producer milk delivered to plants located some distance from the market is reduced in proportion to the distance (and the cost of transporting such milk) from the point of receipt to the market. Providing location differentials based on the cost of moving milk to the market will insure uniform pricing to all handlers regardless of the location where the milk is procured.

To be equitable to all handlers, the Class I price should not be dependent on the type of plant receiving the milk. To the extent that milk is received at distributing plants from producers at a considerable distance from the market and brought to the market by the handler, he has assumed a transportation cost which might otherwise be borne by producers. Accordingly, the Class I price should be adjusted at such plants to reflect the cost of hauling milk to market.

The cost of obtaining milk from alternative sources of supply in the major milk production areas of the country (all of which are necessarily to the north) is an important factor in establishing Class I prices in the Florida order markets. Because of this, the structure of Class I pricing within the State is one of increasing prices from north to south. It would be inappropriate, therefore, to provide for downward adjustments in the Class I price for milk received at plants south of the major points of distribution in the marketing area. Moreover, it is unnecessary to establish a downward location adjustment applicable to any plant in Florida. This is because the points, Jacksonville and Tallahassee, from which location differentials are measured are sufficiently near the northern border of the State so that plants at which location adjustments would appropriately be applicable would necessarily be outside the State.

The Class I price at plants in the southern part of the marketing area should be 10 cents over the announced Class I price for the market. Distributing plants at Orlando, the major distribution center in the southern part of the area, compete with Tampa Bay order plants for milk supplies and sales. Also, Orlando handlers have some competition for sales with Southeastern Florida order handlers. The Tampa Bay and Southeastern Florida Class I prices f.o.b. Orlando are about the same as the proposed Upper Florida Class I price at that point. This pricing scheme will provide a price alignment with respect to Orlando area handlers and handlers to the north and south of that vicinity commensurate with the prevailing competitive situation.

Producers excepted to the plus 10-cent location differential applicable in the Orlando vicinity. Instead, they proposed that no location differential be applicable to the Class I price at any plant in the marketing area. The Class I price provided in this decision is applicable at Jacksonville, the major center of population and principal distribution point in the marketing area. The Tampa Bay and Southeastern Florida Class I prices f.o.b. Jacksonville are about the same as the proposed Upper Florida Class I price at Jacksonville. To adopt the producers' proposal of providing the same Class I price throughout the marketing area would tend to disregard some of the basic factors (e.g., price alignment, cost of obtaining milk from alternative sources of supply) used in determining the Class I prices in the Upper Florida, Tampa Bay and Southeastern Florida orders. Accordingly, the producers' proposal for the elimination of the plus 10-cent location adjustment in the Orlando vicinity is denied.

Upper Florida plants located south of the Florida counties of Dixie, Gilchrist, Alachua, Putnam or St. Johns distribute their milk primarily in the Orlando vicinity. The proposed geographical delineation of the area in which the plus 10-cent adjustment would apply thus would result in uniform pricing for those plants in a generally comparable competitive situation.

Uniform prices paid producers supplying plants at which location differentials apply should likewise be adjusted to reflect the value of milk f.o.b. the point to which delivered.

No adjustment should be made in the Class II and Class III prices because of the location of the plant to which the milk is delivered. There is little difference in the value of milk for these uses associated with location of the plant receiving the milk. This is because of the low cost per hundredweight of milk involved in transporting manufactured products or the concentrated products which may be used in Class II products.

To insure that milk will not be moved unnecessarily at producers' expense, the order should contain a provision to determine whether milk transferred between plants may receive the location differential credit. This should provide that, for the purpose of calculating such credit, fluid milk products received from pool plants shall be assigned to any Class I milk at the transferee plant that is in excess of the sum of producer milk receipts at such plant and receipts from other order plants and unregulated supply plants which are assigned to Class I. Such assignment would be made in sequence according to the location differential applicable at each plant, beginning with the plant nearest the City Hall in Jacksonville, Orlando, or Tallahassee. This sequential assignment of milk based on these locations will provide an equitable basis for facilitating the movement of milk between pool plants for Class I purposes. Likewise, it will tend to discourage the unnecessary moving of milk between pool plants for other than Class I purposes at the expense of producers.

Use of equivalent prices. If for any reason a price quotation required by the order for computing class prices or for other purposes is not available in the manner described, the market administrator should use a price determined by the Secretary to be equivalent to the price which is required. Including such provision in the order will leave no uncertainty with respect to the procedure which shall be followed in the absence of any price quotations which are customarily used and thereby will prevent any unnecessary interruption in the operation of the order.

(d) *Distribution of the proceeds to producers.* A marketwide equalization pool should be included in the proposed order as a means of distributing to producers the proceeds from the sale of their milk. Such a pool will assure a producer supplying the order market a return based on his pro rata share of the total Class I sales of such market. The "blend" that a producer receives for each month's deliveries will be a price based on the overall utilization of all producer milk received at the pool plants of all regulated handlers during such month.

The uniformity of payments to producers provided under a marketwide pool permits a handler either to maintain a manufacturing operation in his plant to handle the seasonal and daily reserve supplies of milk or to limit the operation at his plant to the handling of milk for Class I purposes only, without affecting the blended prices payable to his producers as against other producers in the market. The facilities in the various plants in the area for handling producer milk in excess of that needed for Class I purposes vary considerably. While a number of plants in the market are exclusively Class I operations and handle little or no surplus milk, some plants which would be subject to the order handle milk for manufacturing purposes. Under these conditions, a marketwide pool in the Upper Florida marketing area will facilitate the marketing of producer milk. A marketwide pool will make it possible for producer associations to assist in diverting seasonal reserve milk and thus keep producers on the market who are needed to fulfill the year-round requirements of the market. It will assist also in apportioning among all producers the lower returns from reserve milk where otherwise this burden would be placed on individual groups of producers. A marketwide pool will thereby contribute to market stability and the attainment of an adequate and dependable supply of producer milk.

Payments to producers. Each handler under the order should pay each producer for milk received from such producer, and for which payment is not made to a cooperative association, at not less than the applicable uniform price. Provision also is made for partial payments for milk received during each half of the month.

Producers in the Upper Florida area historically have received partial payments, and the proposed payments adopted herein were supported by both producers and handlers. The first partial payment, for milk delivered during the first 15 days of the month will be required on or before the 20th day of the month at not less than 85 percent of the uniform price of the preceding month. On or before the second day of the following month for milk received from the 16th to the last day of the month, a second partial payment will be required at the same rate as the first partial payment. Final payment to producers will be required on or before the 15th day of the month at the applicable uniform price for the preceding month, less partial payments and authorized deductions.

During the first month the pricing provisions are effective, there will be no previous month's uniform price on which to base partial payments. For this reason, a minimum partial payment rate of $5.00 per hundredweight is provided for such month. This amount will approximate the Class II price.

Provision should be made for a cooperative association to receive payment for the producer milk which it causes to be delivered to a pool plant. The taking of title to milk of its members and the blending of proceeds for the sale of such milk will tend to promote the orderly marketing of milk and will assist a cooperative in discharging its responsibility to its members and to the market.

The Act provides for the payment by handlers to cooperatives for milk delivered by them and permits the blending of all proceeds from the sale of members' milk.

The contracts with its members authorize the principal cooperatives in the markets to collect payment for producer milk. Therefore, each handler, if requested by such cooperative association, would pay such association an amount equal to the sum of the individual payments otherwise payable to such producers. Handlers should be required to make payments to the cooperative association for milk received during the month on or before the second day prior to the date payments are due individual producers.

At the time settlement is made for milk received from producers during the month, the handler should be required to furnish to each producer (or his cooperative association) a supporting statement. This statement should show the

pounds and butterfat tests of milk received from such producer, the rate of payment for such milk and a description of any deductions claimed by the handler.

Producer-settlement fund. All producers will receive payment at the rate of the marketwide uniform price each month. Because the payment due from each handler for producer milk at the applicable class prices may be more or less than he is required to pay directly to producers, a method of equalizing this difference is necessary. A producer-settlement fund should be established for this purpose. A handler whose obligation for producer milk received during the month is greater than the amount he is required to pay producers for such milk at the applicable uniform prices would pay the difference into the producer-settlement fund and each handler whose obligation for producer milk is less than the applicable uniform price values would receive payment of the difference from the fund. Provision for the establishment and maintenance of the producer-settlement fund as set forth in the attached order is similar to that contained in other Federal orders with marketwide pools.

For efficient functioning of the producer-settlement fund, a reasonable reserve should be set aside at the end of each month. This is necessary to provide for such contingencies as the failure of a handler to make payment of his monthly billing to the fund or the payment to a handler from the fund by reason of an audit adjustment. The reserve, which would be operated as a revolving fund and adjusted each month, is established in the attached order at not less than 4 nor more than 5 cents per hundredweight of producer milk in the pool for the month.

Any payments on partially regulated milk received by the market administrator from any handler would be deposited in the producer-settlement fund. Money thus deposited would be included in the uniform price computation and thereby be distributed to all producers on the market.

Marketing services. Provisions should be made in the order for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator and the cost should be borne by producers for whom the services are rendered. If a cooperative association is performing such services for its member-producers and is approved for such activity by the Secretary, the market administrator may accept this in lieu of his own service.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to the other provisions of the order. There are no payments to producers to verify on such milk and, therefore, no need to provide the same marketing services as are provided other producers.

There is need for a marketing service program in connection with the administration of the order in this area. Orderly marketing will be promoted by assuring individual producers that they have obtained accurate weights and tests of their milk. Complete verification requires that butterfat tests and weights of individual producer deliveries reported by the handler are accurate.

An additional phase of the marketing service program is to furnish producers with correct market information. Efficiency in the production, utilization, and marketing of milk will be promoted by providing for the dissemination of current market information on a marketwide basis to producers.

To enable the market administrator to furnish these marketing services, provision should be made for a maximum deduction of 4 cents per hundredweight with respect to receipts of milk from producers for whom he renders such marketing services. Producers' proposal for marketing services would provide a maximum deduction of 6 cents per hundredweight. Southeastern Florida and Tampa Bay, however, contain a maximum deduction of 4 cents. Comparison of the number of producers involved and the expected volume of milk with that of other markets indicates that a 4-cent rate is reasonable and should provide the funds necessary to conduct the program. If later experience indicates that marketing services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

Expense of administration. Each handler should be required to pay to the market administrator, as his proportionate share of the cost of administering the order, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's own production) and on other source milk allocated to Class I (except milk so assessed under another Federal order).

The market administrator must have sufficient funds to enable him to administer properly the terms of the order. The Act provides that such cost of administration shall be financed through an assessment on handlers. A principal function of the market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of Grade A milk received from dairy farmers at a plant and on other source milk allocated to Class I milk.

The order specifies minimum performance standards that must be met to obtain regulated status. Operators of plants not meeting such standards are required to either (1) make specified payments into the producer-settlement fund on route distribution in the marketing area in excess of offsetting purchases of Federal order Class I milk, or (2) otherwise pay into such fund and/or to dairy farmers an amount not less than the classified use value of his receipts from dairy farmers computed as though such plant were a fully regulated plant.

The market administrator, in administering an order as it applies to the nonpool route distributor, must incur expenses in essentially the same manner as in applying the order to pool handlers. However, the order is not applicable to such distributor to the same extent as to regulated handlers. Hence, payment of the administrative assessment on his in-area sales reasonably would constitute his pro rata share of administrative expense.

In the case of unregulated milk which enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at his plant are subject to verification by the market administrator. Hence, it is appropriate that the regulated handler be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among all handlers distributing milk in the proposed marketing area. However, to prevent duplication, an assessment should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

Interest payments on overdue accounts. Provision is made for the payment of interest on amounts due to the market administrator for each month or portion thereof that such obligation is overdue.

Prompt payment of amounts due to the market administrator is essential to the operation of order provisions. Interest charges will encourage payment of amounts due on or before the specified date. The rate provided herein is reasonable to compensate for the cost of borrowing money in accord with normal business practices.

Administrative provisions. Provisions should be included in the order with respect to the administrative steps necessary to carry out the proposed regulation.

In addition to the definitions discussed earlier in this decision, which define the scope of the regulation, certain other terms and definitions are desirable in the interest of brevity and to assure that each usage of the term denotes the same meaning. Such terms as are defined in the attached order are common to many other Federal milk orders.

Market administrator. Provision should be made for the appointment by the Secretary of a market administrator to administer the order and to set forth the powers and duties for such agency essential to the proper functioning of such office.

Records and reports. Provisions should be included in the order requir-

ing handlers to maintain adequate records of their operations and to make reports necessary to establish classification of producer milk and payments due therefor. Such reports are necessary for the computation of the uniform price and determination of each plant's continuing status under the order. The maintenance of adequate records is necessary to enable the market administrator to verify receipts and utilization as reported by the handlers and to verify that the several financial obligations arising under the order are fully discharged.

Handlers should maintain and make available to the market administrator all records and accounts of their operations, together with facilities which are necessary to determine the accuracy of information reported to the market administrator or any other information upon which the classification of producer milk depends. The market administrator must likewise be permitted to check the accuracy of weights and tests of milk and milk products received and handled, and to verify all payments required under the orders.

Detailed reports to the market administrator and complete records available for his inspection by all handlers would be used to determine whether the plants of such handlers qualify as pool plants. Reports of handlers operating nonpool plants from which fluid milk products are distributed in the marketing area would also be used by the market administrator to compute the amounts payable to the producer-settlement fund on such unpriced milk.

A cooperative association having authority to market milk for member producers should have available to it information on the use of such milk by individual handlers in order that member milk may be directed to those handlers needing Class I milk. This will promote orderly marketing by enabling the efficient allocation among handlers of available milk supplies, permit the market to be serviced with smaller reserve supplies and assist producers in maximizing their returns. A provision therefore should be included to authorize the market administrator to provide this information when it is requested by such an association. For the purpose of this report, the utilization of member milk in each handler's plant would be prorated to each class in the same ratio as all producer milk is allocated to each class during the month.

It is necessary that handlers retain records to prove the utilization of milk and that proper payments were made therefor. Since books and records of all handlers cannot be completely audited immediately after receipt of the milk, it becomes necessary to keep such records for a reasonable period of time.

The order should provide limitations on the period of time handlers shall be required to retain books and records and on the period of time in which obligations under the orders shall terminate. Provision made in this regard is identical in principle with the general amendment (made to all milk orders which were in operation on July 30, 1947), following the Secretary's decision of January 26, 1949 (14 F.R. 444). That decision, covering the retention of records and limitation of claims, is equally applicable in this situation and is adopted as a part of this decision.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied for the reasons previously stated in this decision.

General findings. (a) The proposed marketing agreement and order and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Upper Florida Marketing Area," and "Order Regulating the Handling of Milk in the Upper Florida Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted among producers to determine whether the issuance of the attached order regulating the handling of milk in the Upper Florida marketing area, is approved or favored by the producers, as defined under the terms of the proposed order, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of August 1966 is hereby determined to be the representative period for the conduct of such referendum.

A. E. LaLiberte is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (7 CFR 900.300 et seq.), such referendum to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on October 7, 1966.

GEORGE L. MEHREN,
Assistant Secretary.

Order[1] Regulating the Handling of Milk in the Upper Florida Marketing Area

DEFINITIONS

Sec.	
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1006.2	Secretary.
1006.3	Department.
1006.4	Person.
1006.5	Cooperative association.
1006.6	Upper Florida marketing area.
1006.7	Fluid milk product.
1006.8	Distributing plant.
1006.9	Supply plant.
1006.10	Pool plant.
1006.11	Nonpool plant.
1006.12	Route.
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1006.14	Producer-handler.
1006.15	Producer.
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	MARKET ADMINISTRATOR
1006.20	Designation.
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	REPORTS, RECORDS, AND FACILITIES
1006.30	Reports of receipts and utilization.
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	CLASSIFICATION OF MILK
1006.40	Skim milk and butterfat to be classified.
1006.41	Classes of utilization.
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1006.45	Allocation of skim milk and butterfat classified.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, governing proceedings to formulate marketing agreements and marketing orders, have been met.

MINIMUM PRICES

Sec.
1006.50 Basic formula price.
1006.51 Class prices.
1006.52 Butterfat differentials to handlers.
1006.53 Location differentials to handlers.
1006.54 Use of equivalent prices.

APPLICATION OF PRICES

1006.60 Computation of the net pool obligation of each handler.
1006.61 Computation of uniform price.
1006.62 Obligations of handler operating a partially regulated distributing plant.

PAYMENTS

1006.70 Time and method of payment.
1006.71 Butterfat differential to producers.
1006.72 Location differentials to producers and on nonpool milk.
1006.73 Producer-settlement fund.
1006.74 Payments to the producer-settlement fund.
1006.75 Payments from the producer-settlement fund.
1006.76 Marketing services.
1006.77 Expense of administration.
1006.78 Adjustment of accounts.
1006.79 Interest payments.
1006.80 Termination of obligations.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

1006.90 Effective time.
1006.91 Suspension or termination.
1006.92 Continuing power and duty of the market administrator.
1006.93 Liquidation after suspension or termination.

MISCELLANEOUS PROVISIONS

1006.100 Separability of provisions.
1006.101 Agents.

AUTHORITY: The provisions of this Part 1006 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1006.0 Findings and determinations.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order regulating the handling of milk in the Upper Florida marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(3) The said order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in this order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to (i) producer milk (including such handler's own production); (ii) other source milk allocated to Class I pursuant to § 1006.45(a) (3) and (9) and the corresponding steps of § 1006.45(b); and (iii) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Upper Florida marketing area shall be in conformity to, and in compliance with, the following terms and conditions:

The provisions of §§ 1006.1 to 1006.101, both inclusive, of the proposed order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on August 25, 1966 (31 F.R. 11465; F.R. Doc. 66–9452), shall be and are the terms and conditions of this order and are set forth in full herein subject to the revisions made in §§ 1006.17(b), 1006.41(c)(1), and 1006.60 (d).

DEFINITIONS

§ 1006.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1006.2 Secretary.

"Secretary" means the Secretary of Agriculture or any officer or employee of the United States authorized to exercise the powers and perform the duties of the Secretary of Agriculture.

§ 1006.3 Department.

"Department" means the U.S. Department of Agriculture.

§ 1006.4 Person.

"Person" means any individual, partnership, corporation, association or other business unit.

§ 1006.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of or marketing milk or milk products for its members.

§ 1006.6 Upper Florida marketing area.

The "Upper Florida marketing area", hereinafter called the "marketing area", means all the territory geographically within the boundaries of the following counties, all in the State of Florida, including all waterfront facilities connected therewith and all territory wholly or partly therein occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments.

Alachua.	Lafayette.
Baker.	Lake.
Bay.	Leon.
Bradford.	Levy.
Brevard.	Liberty.
Calhoun.	Madison.
Citrus.	Marion.
Clay.	Nassau.
Columbia.	Orange.
Dixie.	Osceola.
Duval.	Putnam.
Flagler.	St. Johns.
Franklin.	Seminole.
Gadsden.	Sumter.
Gilchrist.	Suwannee.
Gulf.	Taylor.
Hamilton.	Union.
Holmes.	Volusia.
Jackson.	Wakulla.
Jefferson.	Washington.

§ 1006.7 Fluid milk product.

"Fluid milk product" means milk (including frozen and concentrated milk), flavored milk or skim milk. "Fluid milk product" shall not include sterilized products in hermetically sealed containers.

§ 1006.8 Distributing plant.

"Distributing plant" means a plant that is approved by a duly constituted health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month in the marketing area on routes.

§ 1006.9 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority is shipped during the month to a pool plant.

§ 1006.10 Pool plant.

"Pool plant" means a plant specified in paragraph (a) or (b) of this section that is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(a) A distributing plant from which not less than 50 percent of the total Grade A fluid milk products received at the plant during the month is disposed of on routes and not less than 10 percent of such receipts is disposed of in the marketing area on routes.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products to pool plants pursuant to paragraph (a) of this section.

§ 1006.11 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to § 1006.10 and a greater volume of fluid milk products is disposed of from such plant in this marketing area on routes and to pool plants qualified on the basis of route distribution in this marketing area than in the marketing area regulated pursuant to such other order.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

(d) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

(e) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant or an exempt distributing plant.

§ 1006.12 Route.

"Route" means a delivery (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I pursuant to § 1006.41(a)(1).

§ 1006.13 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a partially regulated distributing plant;

(c) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(d) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(e) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant; and

(f) A producer-handler.

§ 1006.14 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant from which the Class I disposition (except that represented by nonfat solids used in the fortification of fluid milk products) is entirely from his own farm production;

(b) Receives no fluid milk products from sources other than his own farm production; and

(c) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all fluid milk products handled and the operation of the processing and packaging business are his personal enterprise and risk.

§ 1006.15 Producer.

"Producer" means any person, except a producer-handler as defined in any order (including this part) issued pursuant to the Act or the operator of an exempt distributing plant, who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1006.16 from a pool plant to a nonpool plant.

§ 1006.16 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1006.13(d): *Provided*, That if the milk received at a pool plant from a handler pursuant to § 1006.13(d) is purchased on a basis other than farm weights, the amount by which the total farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1006.13(d) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is neither an other order plant nor a producer-handler plant for the account of the pool plant operator or a cooperative association in any month in which not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant, subject to the following:

(1) Milk so diverted for the account of a handler operating a pool plant shall be deemed to have been received by the handler at the plant to which diverted and if diverted for the account of a cooperative association, shall be deemed to have been received by the cooperative association at the location of the plant to which diverted;

(2) If diverted from the pool plant of another handler for the account of a cooperative association, the aggregate quantity of milk of member producers of the cooperative association so diverted that exceeds 25 percent of the milk physically received from member-producers at pool plants during the month shall not be deemed to have been received at a pool plant and shall not be producer milk;

(3) If diverted by a handler operating a pool plant for his account, the aggregate quantity of producer milk so diverted that exceeds 25 percent of the aggregate quantity of milk physically received from producers at such plant during the month shall not be deemed to have been received at a pool plant and shall not be producer milk; and

(4) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (2) and (3) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1006.17 Other source milk.

"Other source milk" means the skim milk and butterfat contained in or represented by:

(a) Fluid milk products and Class II products from any source except (1) producer milk, (2) fluid milk products and Class II products from pool plants, and (3) fluid milk products and Class II products in inventory at the beginning of the month;

(b) Products other than fluid milk products and Class II products from any source (including those produced at the plant) which are reprocessed, converted into or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid products in a form in which they may be converted into a Class I product and which are not otherwise accounted for pursuant to § 1006.33.

§ 1006.18 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of 92-score bulk creamery butter at Chicago as reported for the month by the Department.

§ 1006.19 Class II product.

"Class II product" means cream, sour cream, half and half, buttermilk, acidophilus milk and chocolate drink.

MARKET ADMINISTRATOR

§ 1006.20 Designation.

The agency for the administration of this order shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1006.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To make rules and regulations to effectuate its terms and provisions;

(c) To receive, investigate, and report to the Secretary complaints of violations; and

(d) To recommend amendments to the Secretary.

§ 1006.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part,

including but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds received pursuant to § 1006.77 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses except those incurred under § 1006.76, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made either reports pursuant to §§ 1006.30 through 1006.32 or payments pursuant to §§ 1006.70, 1006.74, 1006.76, 1006.77, and 1006.78;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends, and by such investigation as the market administrator deems necessary.

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The 5th day of each month the Class I price and Class I butterfat differential, both for the current month;

(2) The 5th day of each month the Class II and Class III prices and the corresponding butterfat differentials, all for the preceding month; and

(3) The 11th day of each month the uniform price and the producer butterfat differential, both for the preceding month;

(k) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month;

(l) Whenever required for purposes of allocating receipts from other order plants pursuant to § 1006.45(a)(10) and the corresponding step of § 1006.45(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received skim milk and butterfat in the form of fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1006.45 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such reports; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report.

Reports, Records, and Facilities

§ 1006.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler (except a handler pursuant to § 1006.13 (e) or (f)) shall report to the market administrator for such month with respect to each plant at which milk is received, reporting in detail and on forms prescribed by the market administrator;

(a) The quantities of skim milk and butterfat contained in or represented by:

(1) Producer milk (or, in the case of handlers pursuant to § 1006.13(b), Grade A milk received from dairy farmers);

(2) Fluid milk products and Class II products received from pool plants of other handlers;

(3) Other source milk;

(4) Milk diverted to nonpool plants pursuant to § 1006.16; and

(5) Inventories of fluid milk products and Class II products at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement showing the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes; and

(c) Such other information with respect to the receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

§ 1006.31 Producer payroll reports.

(a) Each handler pursuant to § 1006.13 (a), (c), and (d) shall report to the market administrator in detail and on forms prescribed by the market administrator on or before the 20th day after the end of the month his producer payroll for such month which shall show for each producer:

(1) His identity;

(2) The quantity of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handler's payment, together with the price paid and the amount and nature of any deductions.

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1006.62(b) shall report to the market administrator on or before the 20th day after the end of the month the same information required of handlers pursuant to paragraph (a) of this section. In such report, payments to dairy farmers delivering Grade A milk shall be reported in lieu of payments to producers.

§ 1006.32 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

(c) Each handler pursuant to § 1006.13 (d) shall report to the market administrator, in detail and on forms prescribed by the market administrator on or before the 7th day after the end of the month the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

§ 1006.33 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data for each month, with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products in inventory at the beginning and end of each month; and

(d) Payments to dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

§ 1006.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such 3-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records or specified books and records until further notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION OF MILK

§ 1006.40 Skim milk and butterfat to be classified.

The skim milk and butterfat required to be reported pursuant to § 1006.30 shall be classified each month pursuant to the provisions of §§ 1006.41 through 1006.45: *Provided*, That such skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1006.41 Classes of utilization.

Subject to the conditions set forth in § 1006.43, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as provided in paragraphs (b)(2) and (c) (2), (3), and (4) of this section; and

(2) Not accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk sh ll be all skim milk and butterfat:

(1) Disposed of in the form of a Class II product, except as provided in paragraph (c) (2), (3), and (4) of this section; and

(2) In inventory of fluid milk products and Class II products at the end of the month.

(c) *Class III milk.* Class III milk shall be:

(1) Skim milk and butterfat used to produce frozen desserts (e.g., ice cream, ice cream mix), eggnog, yogurt, aerated cream products, butter, cheese (including cottage cheese), evaporated and condensed milk (plain or sweetened), nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, and sterilized products in hermetically sealed containers;

(2) Skim milk and butterfat in fluid milk products and in Class II products disposed of by a handler for livestock feed;

(3) Skim milk and butterfat in fluid milk products and in Class II products dumped by a handler after notification to, and opportunity for verification by, the market administrator;

(4) Skim milk represented by the nonfat solids added to a fluid milk product or Class II product which is in excess of an equivalent volume of such product prior to the addition;

(5) Skim milk and butterfat, respectively, in shrinkage at each pool plant (except in milk diverted to a nonpool plant pursuant to § 1006.16) but not in excess of:

(i) 2 percent of producer milk (except that received from a handler pursuant to § 1006.13 (d));

(ii) Plus 1.5 percent of producer milk received from a handler pursuant to § 1006.13(d): *Provided*, That if the handler receiving such milk files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage pursuant to this subdivision shall be 2 percent;

(iii) Plus 1.5 percent of bulk fluid milk products received from other pool plants;

(iv) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II or Class III utilization was requested by the operators of both plants;

(v) Plus 1.5 percent of bulk fluid milk products from unregulated supply plants exclusive of the quantity for which Class II or Class III utilization was requested by the handler;

(vi) Less 1.5 percent of bulk fluid milk products transferred to other plants; and

(6) Skim milk and butterfat in shrinkage of other source milk allocated pursuant to § 1006.42(b)(2).

§ 1006.42 Shrinkage.

The market administrator shall allocate shrinkage over each pool plant's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each pool plant; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in:

(1) The net quantity of producer milk and other fluid milk products specified in § 1006.41(c)(5); and

(2) Other source milk exclusive of that specified in § 1006.41(c)(5).

§ 1006.43 Transfers.

Skim milk or butterfat shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred in the form of a fluid milk product or a Class II product from a pool plant to the pool plant of another handler, subject to the following conditions:

(1) The skim milk or butterfat so assigned to each class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1006.45(a)(10) and the corresponding step of § 1006.45(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1006.45(a)(3), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1006.45(a) (9) or (10) and the corresponding steps of § 1006.45(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

(b) As Class I milk, if transferred or diverted in the form of a fluid milk product or a Class II product to a nonpool plant that is not an other order plant, a producer-handler plant or an exempt distributing plant unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification in Class II or Class III in his report submitted pursuant to § 1006.30;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to such receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply of Grade A milk for such nonpool plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to the skim milk and butterfat in receipts of fluid milk products transferred or diverted from plants fully regulated by such order, next pro rata to such receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants;

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat in fluid milk products so transferred shall be classified as Class III milk to the extent available and the remainder as Class II milk; and

(v) To the extent that Class I or Class III utilization is not assigned to it, the skim milk and butterfat in Class II products so transferred shall be classified as Class II milk.

(c) As follows, if transferred in the form of a fluid milk product or Class II product to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II or Class III to the extent of the Class II or Class III utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and allocations to other classes shall be classified in a comparable classification as Class II or Class III milk; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1006.41.

(d) As Class II (to the extent of such utilization in the transferee plant) if transferred to the plant of a producer-handler in the form of a Class II product, unless a Class III classification is requested by the operators of both plants and sufficient Class III utilization is available in the transferee plant.

(e) As Class I milk if transferred or diverted in the form of a fluid milk product, and as Class II milk if transferred in the form of a Class II product, from a pool plant to an exempt distributing plant.

§ 1006.44 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors all reports submitted pursuant to § 1006.30 and from such reports, shall compute for each handler the total pounds of skim milk and butterfat in each class: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk used or disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product plus all the water originally associated with such solids.

§ 1006.45 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1006.44, the market administrator shall determine the classification of producer milk for each handler for each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1006.41(c)(5);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class III milk, the lesser of the pounds remaining or the quantity associated with such receipts and classified as Class III pursuant to § 1006.41(c)(4) plus 2 percent of the remainder of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product or a Class II product;

(ii) Receipts of fluid milk products for which Grade A certification is not established, or which are from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order; and

(iv) Receipts of fluid milk products from an exempt distributing plant;

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class III (and then Class II), the pounds of skim milk in Class II products received from nonpool plants for which the handler requests a Class III utilization;

(5) Subtract from the pounds of skim milk remaining in Class II and Class III, pro rata to such quantities, the pounds of skim milk in Class II products received from nonpool plants that were not subtracted pursuant to subparagraph (4) of this paragraph;

(6) Subtract, in the order specified below, from the pounds of skim milk remaining in Class III and/or Class II (beginning with Class III unless otherwise specified below) but not in excess of such quantity or quantities:

(i) Receipts of fluid milk products from unregulated supply plants:

(*a*) For which the handler requests such utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk, the sum of the pounds of skim milk in producer milk, in receipts of fluid milk products from pool plants of other handlers, and in receipts of fluid milk products in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class III or Class II utilization was requested by the operator of such plant and the handler;

(7) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk (and then Class I), the pounds of skim milk in inventory of fluid milk products and Class II products at the beginning of the month;

(8) Add to the remaining pounds of skim milk in Class III milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(9) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (6)(i) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, in the following order, the pounds of skim milk in receipts of fluid milk products in bulk from other order plants, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (6)(ii) of this paragraph:

(i) In series beginning with Class III, and thereafter from Class II, the pounds determined by multiplying the pounds of such receipts by the larger of the percentage of estimated Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1006.22(l) or the percentage that Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remaining pounds of such receipts;

(11) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products and in Class II products received from pool plants of other handlers ac-

cording to the classification of such products pursuant to § 1006.43(a); and

(12) If the pounds of skim milk remaining exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section;

(c) Determine the weighted average butterfat content of producer milk in each class as computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 1006.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the Department for the month. Such price shall be adjusted to a 3.5 percent butterfat basis by a butterfat differential (rounded to the nearest one-tenth cent) at the rate of the Chicago butter price times 0.12 and rounded to the nearest cent.

§ 1006.51 Class prices.

Subject to the provisions of §§ 1006.52 and 1006.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* For the first 18 months from the effective date of this section, the Class I price shall be the basic formula price for the preceding month plus $2.80.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus $1.

(c) *Class III price.* The Class III price shall be the basic formula price for the month plus 15 cents.

§ 1006.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices pursuant to § 1006.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the following rates:

(a) Class I price, 7.5 cents;

(b) Class II price, 7.5 cents; and

(c) Class III price, 0.115 times the Chicago butter price for the month.

§ 1006.53 Location differentials to handlers.

(a) The Class I price for producer milk and other source milk (for which a location adjustment is applicable) at a plant south of Dixie, Gilchrist, Alachua, Putnam or St. Johns Counties, Fla., shall be increased 10 cents and at a plant outside the State of Florida and 70 miles or more from the nearer of the City Halls in Jacksonville and Tallahassee, Fla., shall be reduced 10 cents and an additional 1.5 cents for each 10 miles or fraction thereof that such plant is more than 85 miles from the nearer of the Jacksonville and Tallahassee City Halls.

(b) For the purpose of calculating location differentials, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made in sequence according to the location differential applicable at each plant, beginning with the plant nearest the City Hall in Jacksonville, Orlando or Tallahassee, Fla.

§ 1006.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price that is required.

APPLICATION OF PRICES

§ 1006.60 Computation of the net pool obligation of each handler.

The net pool obligation of each handler pursuant to § 1006.13 (a), (c), and (d) during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class as computed pursuant to § 1006.45(c) by the applicable class price;

(b) Add the amount obtained from multiplying the overage deducted from each class pursuant to § 1006.45(a)(12) and the corresponding step of § 1006.45 (b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1006.45(a)(7) and the corresponding step of § 1006.45(b);

(d) Add an amount equal to the difference between the Class I and Class III price values at the pool plant of the skim milk and butterfat subtracted from Class I pursuant to § 1006.45(a)(3) and the corresponding step of § 1006.45(b);

(e) Add the value at the Class I price adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, of the skim milk and butterfat subtracted from Class I pursuant to § 1006.45(a)(9) and the corresponding step of § 1006.45(b).

§ 1006.61 Computation of uniform price.

For each month, the market administrator shall compute a uniform price as follows:

(a) Combine into one total the values computed pursuant to § 1006.60 for all handlers who filed the reports pursuant to § 1006.30 for the month, except those in default of payments required pursuant to § 1006.74 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of milk represented by the values specified in paragraph (a) of this section is less or more, respectively, than 3.5 percent, the amount obtained by multiplying such difference by the butterfat differential pursuant to § 1006.71 and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the minus location differentials computed pursuant to § 1006.72(a);

(d) Subtract an amount equal to the total value of the plus location differential computed pursuant to § 1006.72(a);

(e) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1006.60(e); and

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

§ 1006.62 Obligations of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1006.30 and 1006.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) The obligation that would have been computed pursuant to § 1006.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II or Class III milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1006.60(e) and a credit in the amount specified in § 1006.74(b)(2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph. If the operator of the partially regulated distributing plant so requests, and provides with his report pursuant to § 1006.30 a similar report for each nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1006.10(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in

the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation, deduct the sum of:

(i) The gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph; and

(ii) Payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk in the marketing area on routes;

(2) Deduct (except that deducted under a similar provision of another order issued pursuant to the Act) the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants;

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the uniform price applicable at such location or at the Class III price, whichever is higher.

PAYMENTS

§ 1006.70 Time and method of payment.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the 20th day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than 85 percent of the uniform price for the preceding month (not less than $5 for the first month this provision is in effect) per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer;

(2) On or before the 5th day of the following month to each producer who had not discontinued shipping milk to such handler before the last day of the month, not less than 85 percent of the uniform price for the preceding month (not less than $5 for the first month this provision is in effect) per hundredweight of milk received from the 16th through the last day of the month, less proper deductions authorized in writing by such producer; and

(3) On or before the 15th day of each month to each producer for milk received during the preceding month, not less than the uniform price per hundredweight, adjusted pursuant to §§ 1006.71, 1006.72, and 1006.76, subject to the following:

(i) Minus payments made pursuant to subparagraphs (1) and (2) of this paragraph;

(ii) Less proper deductions authorized in writing by such producer; and

(iii) If by such date such handler has not received full payment from the market administrator pursuant to § 1006.75 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the second day prior to the date on which payments are due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion, through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1006.71 Butterfat differential to producers.

The uniform price shall be increased or decreased for each one-tenth percent that the butterfat content of such milk, is above or below 3.5 percent, respectively, at the rate (rounded to the nearest one-tenth cent) determined by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1006.45 by the respective butterfat differential for each class.

§ 1006.72 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced or increased according to the location of the pool plant at the rates set forth in § 1006.53; and

(b) For purposes of computations pursuant to §§ 1006.74 and 1006.75, the uniform price shall be adjusted at the rates set forth in § 1006.53 applicable at the location of the nonpool plant from which the milk was received.

§ 1006.73 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1006.62 and 1006.74 and out of which he shall make all payments from such fund pursuant to § 1006.75: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1006.74 Payments to the producer-settlement fund.

On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section exceed the amounts specified in paragraph (b) of this section:

(a) The net pool obligation pursuant to § 1006.60 for such handler; and

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform price; and

(2) The value at the uniform price applicable at the location of the plant(s) from which received (not to be less than the value at the Class III price) of other source milk for which a value is computed pursuant to § 1006.60(e).

§ 1006.75 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1006.74(b) exceeds the amount computed pursuant to § 1006.74(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1006.76 Marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 4 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and

to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1006.77 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1006.45(a) (3) and (9) and the corresponding steps of § 1006.45(b); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1006.78 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in monies due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1006.79 Interest payments.

The unpaid obligation of a handler pursuant to §§ 1006.74, 1006.76, 1006.77, and 1006.78 shall be increased one-half of 1 percent for each month or portion thereof that such obligation is overdue.

§ 1006.80 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representative all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representative;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the milk involved in the claims was received if an underpayment is claimed, or 2 years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler, if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 1006.90 Effective time.

The provisions of this part or any amendment thereto shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1006.91 Suspension or termination.

The Secretary shall suspend or terminate any or all provisions of this part whenever he finds that they obstruct or do not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 1006.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary, execute such assignment or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the market administrator or such person pursuant thereto.

§ 1006.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, the market administrator, or such person as the Secretary may designate shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1006.100 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 1006.101 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

[F.R. Doc. 66-11145; Filed, Oct. 12, 1966; 8:48 a.m.]

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VOLUME 31 • NUMBER 200

Friday, October 14, 1966 • Washington, D.C.

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